TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 343.

RAMON VALDÉS, APPELLANT,

vs.

TULIO LARRINAGA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

FILED SEPTEMBER 10, 1913.

(23,353)

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INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 16, 1914.

1 Filed August 8, 1912.

In the United States District Court for Porto Rico.

No. 573. Equity.

TULIO LARRINAGA, Complainant,
vs.
RAMON VALDES, Defendant.

Præcipe for Transcript.

To the Clerk of the above Court:

You will please prepare a transcript of the record in the above cause, to be filed in the office of the Clerk of the Supreme Court of the United States, under the appeal heretofore allowed to said Court, and include in the said transcript of record the following pleadings, proceedings and papers on file, to wit:

Bill of Complaint.
Demurrer to the Bill of Complaint.
Order overruling Demurrer, made March 18th, 1909.
Answer to the Bill of Complaint.
Replication to the Answer.
Stenographer's Notes taken at the Trial.
Exhibits "A" to "S" for the Complainant.
Exhibits "A," "B," "C," "D" not admitted and "E" for Defendant.

Journal Entries made on June 10, 11 and 29, 1912.
2 Statements made by the Court and taken by Stenographer on June 29th, 1912.
Decree on Accounting.
Final Decree.
Petition for Appeal and Supersedeas.
Assignment of Errors.
Order allowing Appeal.
Citation on Appeal.
Bond on Appeal.
Order approving Bond.
Ratification of Bond by Defendant.
Copy of Præcipe.

Said transcript to be prepared as required by law and by the Rules of this Court and of the Supreme Court of the United States, for filing in the office of the Clerk of the Honorable The Supreme Court of the United States.

Very respectfully,
(Signed) MARTIN TRAVIESO, JR.,
Solicitor for the Defendant.

San Juan, August 8, 1912.

1—343

3 Filed July 22, 1908.

In the District Court of the United States for the District of Porto Rico.

TULIO LARRINAGA, Complainant,
vs.
RAMÓN VALDÉS, Defendant.

Complaint.

To the Honorable Bernard S. Rodey, Judge of the District Court of the United States for Porto Rico:

The above named complainant brings this his bill of Complaint against the above named defendant, and thereupon he alleges:

I.

That the said complainant, Tulio Larrinaga, is a citizen and resident of Porto Rico residing at the City of San Juan, and that the above named Defendant, Ramón Valdés, is a subject of the kingdom of Spain doing business in Porto Rico, and that the amount in controversy in this action and for which relief is demanded exceeds, exclusive of costs, the sum of One Thousand Dollars ($1,000.00).

II.

That heretofore and prior to the month of October, 1898, the said defendant Ramón Valdés, being then engaged in various business enterprises in Porto Rico, was endeavoring to obtain from the Spanish government a concession granting to him the said Valdés the right and privilege to divert and use the waters of the river Plata at and in the immediate vicinity of the falls of the river in
4 the municipality of Comerio, Porto Rico, for the purpose of generating electricity to be used for heat, lighting power and other purposes. That in order that the said Valdés should be successful in securing the grant of said concession to him it was necessary that he should have prepared and furnish to the proper governmental authorities full information and data in relation to the character and extent of the work and improvements which he was intending to construct; it being required by the government officials that he should furnish technical data relating to the projected enterprise, including plans, specifications and other detailed technical information, and that in and about the preparation of such plans and specifications and the securing of such technical information the said Valdés not being an expert in said business, although he had already some preliminary plans for said project, however, he sought for and secured the assistance and the services of the above named complainant, who was and is a civil engineer of many years' experience, to assist him in his efforts to carry through to a successful termination his said application for the said concession or franchise.

III.

Complainant further alleges that at about said time the said complainant and defendant entered into a verbal agreement or compact, wherein and whereby it was agreed that said complainant should assist said defendant in securing said franchise, and particularly that the said complainant should perform the duties in connection with the technical part of said work in the preparation of plans, projects, descriptions and other technical matters; and it was agreed that the said complainant should receive in compensation for his assistance and services in the premises a sum equal to ten per cent (10%) of the net value of all profit *of* benefit which might be derived from the said franchise, in case the same should be granted. That the said verbal agreement so entered into between the plaintiff and defendant was confirmed by the said defendant on the 30th day of October, 1898, by a letter written by the said defendant to the said complainant, in which the identical proposition to give to the said complainant ten per cent. (10%) of the benefit to be derived from the said franchise was restated; that the said complainant, in writing, accepted the said proposition so made by the said defendant and under the terms and conditions of the said agreement so made the said complainant occupied himself in connection with the preparation of the said plans, specifications and detailed technical work in connection with the said application, giving his aid and assistance in every way and manner to the said defendant in supporting the application of the said defendant for the granting of the said concession or franchise. That during said time one Arpin and one Noble, who were likewise interested in certain lands in the vicinity of said waterfalls, were also seeking to secure a concession similar to that which was being asked for by the said defendant, and that the said complainant also aided and assisted the said defendant in connection with the opposition he was making to the application of the said Arkin and Noble for a franchise similar to that which was being asked for by the said defendant.

IV.

Complainant further alleges that owing to the change of government in Porto Rico at about the time of the making of said application to the Spanish government, no action was taken on account of the said application; but thereafter and in the month of March, 1899, the said defendant renewed his said application and presented the same in the joint names of himself and the complainant Larrinaga to the then military governor representing the government of the United States in Porto Rico, and that by various endorsements and references through different branches of the War Department the said application was finaly brought to the attention of the Secretary of War; but that upon full consideration it was determined that the said Secretary of War did not have authority under the law to grant the concession or franchise in the manner and form as the same had been applied for. That there-

after and on the 31st day of July, 1899, the said defendant, with the aid and assistance of the complainant, presented his application to the Secretary of War at Washington for the granting to him of what was known as a revocable license for the use of the said water power in the manner and form as he had been seeking in his other applications so presented by him. That in and about the prosecution of the said application for a temporary license for said purpose, the said defendant called upon the plaintiff for his aid and assistance in various matters connected therewith, and that in pursuance thereof the said complainant, leaving his business in Porto Rico, went to Washington, where he remained for some time applying himself exclusively in the matter of assisting the said defendant in securing the grant of said concession or franchise, with the result that through the good efforts and hard labors of the complainant the Secretary of War, during the month of August, 1899, did issue to the said defendant the said license or franchise for the use of the said water power as was so sought for by said defendant.

Your orator further alleges that after the granting of the said license or franchise by the Secretary of War to the said defendant, the said defendant wholly failed to comply with the terms and conditions attached to the said grant or franchise, with the re-
7 sult that in the month of March, 1900, the Secretary of War forfeited and cancelled the said license or franchise which had been so granted as aforesaid to the said defendant through the efforts and good offices of the said complainant.

V.

Your orator further alleges that still pursuing his efforts to secure a proper grant or franchise for the use of the said water power, the said defendant, with the assistance of the complainant, presented, on May 1, 1900, to the Executive Council of Porto Rico (which body had just been created at said time, with power and authority to consider and grant franchises and concessions of a similar character) his application for the granting to him of a franchise or concession in accordance with the same plans and specifications and with the same purposes and objects as had been utilized by him in connection with his said prior applications for that end. That in and about the prosecution of the said application for a franchise on behalf of the said defendant before the Executive Council aforesaid, the said defendant utilized in every way the services of the complainant who prepared the technical plans and specifications and furnished to the said Executive Council such information and data as was required in connection with the hearing of said matter, and in every way the said complainant assisted the said defendant relying upon their said contract as hereinbefore set forth in prosecuting his said application. That the result of the said application was that the Executive Council of Porto Rico did, on the 17th day of December, 1900, pass an ordinance granting to the said defendant a concession and franchise authorizing him to utilize the waters

of the Rio Plata and to develop the same into water power
8 for mechanical purposes to be applied to the generation of electrical energy and for the construction of transmission and distributing lines for the utilization of said power.

That in and about all of the efforts and steps taken for obtaining the said franchise, and particularly in the matter of the gathering and furnishing of technical information relating to the same, the said defendant depended entirely upon the complainant, and that it was through the help and assistance of the said complainant in said direction and in accordance with the terms of the said agreement hereinbefore referred to, that the successful result of said application was obtained.

That after the said franchise became operative and had been accepted by the said defendant as required therein, the complainant performed the necessary technical preparatory works at the said waterfalls where the plant was to be erected under the terms of the said franchise, so that the terms and conditions of the said franchise might be fully complied with within the time limited in and by the same. But your orator alleges that the said defendant, being either unable or unwilling to expend the moneys necessary to successfully carry on the works required by the terms of the said franchise, it became and was necessary for the said defendant to make various applications to the Executive Council of Porto Rico for extensions of time within which to comply with the different clauses and provisions of the said franchise. That several such extensions of time were granted by the Executive Council aforesaid largely through the efforts of the complainant who was always active and diligent in assisting the said defendant in securing said extensions, and particularly it was urged upon the Executive Council aforesaid that certain litigation was then pending between the said defendant and the said Arpin and Noble, hereinbefore
9 referred to, respecting their respective rights to lands adjoining the said waterfalls; so that the time for complying with the terms of the said franchise through the various extensions which were so granted carried the same up to the month of July, 1902, at which time the said Executive Council refusing to further extend the said time for the compliance with the terms and conditions of said franchise passed a certain resolution declaring the same to be forfeited.

VI.

That in part compliance with the terms and provisions of the said franchise so granted by the Executive Council of Porto Rico, the said defendant had deposited, as a guarantee that he would comply with the terms and conditions of the said franchise with the Treasurer of Porto Rico, Ten Thousand Dollars ($10,000.00) first in cash which was afterwards returned and the said defendant was allowed to substitute therefor negotiable securities for said amount. That at the time of the passage of the resolution, in July, 1902, attempting to forfeit the said franchise and largely through the aid and assistance and efforts of the said complainant, the said Executive Council in and by the said resolution provided and stipulated

that the said Ten Thousand Dollars ($10,000.00) so deposited as aforesaid as a guarantee by the said defendant should be returned to him. But your orator alleges that the said defendant and the complainant both refused to recognize the legality or validity of the said action of the said Executive Council in decreeing the said franchise to be forfeited, and the said defendant refused to withdraw the said securities which had been so deposited as a guarantee for his compliance with the same, claiming and contending that the compliance with the franchise and the terms thereof having
10 been prevented by certain pending litigation which it was beyond the power of the defendant to control, that under the terms of the said franchise the said Executive Council was not empowered or authorized to declare the same forfeited in the way and manner in which it was attempted to be done, and that the said defendant and your orator at all times thereafter urged and claimed that the said franchise had never been legally forfeited or annulled and protested against the same both in writing and verbally to the said Executive Council, maintaining that the rights of the said defendant thereunder continued to exist.

VII.

That thereafter the said Executive Council of Porto Rico, by an ordinance duly passed, attempted to grant a concession or franchise for the utilization of said water power to one Yaeger, who in turn sold and assigned the same to a corporation known as the Vandergrift Construction Company; that the said concession of said water power was included in a grant and franchise for the construction of a line of railway from San Juan to Ponce, and including likewise the grant of the right to use other water powers as well as that which was being sought for by the said defendant.

That your orator and the said defendant at all times protested against the granting of the said franchise to the said Yaeger or the said Vandergrift Construction Company and protested against the legality thereof, and always maintained and asserted that the franchise to the said defendant which had been theretofore granted to him as aforesaid was still in force and effect, and that the said Vandergrift franchise was illegal and invalid. That in and about the protesting of the granting of the said franchise to the
11 said Vandergrift Construction Company and in the general opposition thereto of the said defendant your orator was active and diligent in assisting the said defendant and his services were sought for by the said defendant in said behalf. That in and about the opposition to the said so-called Vandergrift franchise the protests against the same and the application for the annulment thereof was finally carried to the President of the United States, and that your orator, representing the said defendant as the protestant in said matter, was active and diligent in the City of Washington in assisting in securing the order of the President of the United States annulling and setting aside the said so-called Vandergrift franchise; which said order annulling the same was finally and largely

through the efforts of your orator approved by the President of the United States about the month of April, 1905.

VIII.

Your orator further alleges that at the session of the general legislative assembly of Porto Rico during the first months of the year 1905, there had been passed a law providing that the right to the use of the said water power at Comerio Falls should under certain regulations and conditions, be granted to the party who should make the best bid and offer to develop the same, and that acting in pursuance of the said law the Executive Council of Porto Rico, on the 8th day of August, 1905, by resolution duly adopted, declared its intention to advertise in the newspapers of Porto Rico for bids for the franchise for the development of the said water power; it being provided in and by the said franchise that such bids should be submitted to the Executive Council on December 2nd, 1905, when the same would be opened and considered by the said
12 Executive Council. Your orator alleges that prior to the time of advertising for the said bids by the Executive Council for a franchise for said water power, that the said defendant Valdés, without the knowledge of the complainant and without giving to the complainant any opportunity to be heard or have any advise in connection therewith, had been so secretly negotiating with certain capitalists and other persons in the United States for the formation of a new company, which company should purchase from the said defendant all of the right, title and interest of the defendant to certain properties which he then owned and claimed to own in Porto Rico including the electric light plant in the City of San Juan, also all property in the vicinity of the said Comerio Falls belonging to the said defendant or in which he was interested; and also that the said company should acquire all the right, title and interest of the said defendant in and to the said franchise which had been so granted to him by the Executive Council of Porto Rico in the year 1900. That in pursuance of the said efforts of the said defendant Valdés a corporation was duly organized under the laws of the State of Maine called and known as the Porto Rico Power and Electric Company, and that the said company, after its incorporation, purchased from the said Valdés or entered into a contract for the purchase from said Valdés of the properties hereinbefore specified belonging to the said Valdés, including the said franchise which had been so secured by the said Valdés through the joint efforts of the said defendant and your orator as hereinbefore alleged; and that the said franchise and all of the right, title and interest of the said Valdés thereunder were duly assigned and transferred to the said company by the said Valdés, by a written assignment, on the first day of June, 1905.

13 Your orator alleges that the said company was organized by the said Valdés and his associates for the purpose not only of acquiring the rights of the said Valdés under the said franchise as well as acquiring the said property of the said Valdés, but also with the intention and purpose of perfecting the rights of the said

company to the use and development of the said Comerio Waterfalls for electric power either by the use of the said franchise which was so sold by said Valdés to the said company, or by the securing of such additional franchise as might be considered advisable for said purpose; and your orator alleges that in consideration of the transfer of the said property and of the said franchise from the said Valdés to the said company, the said company agreed to pay and afterwards did pay to the said Valdés as the consideration therefor many thousands of dollars in cash, the amount whereof to your orator is at this time unknown, and did agree to issue to the said Valdés and afterwards did issue to the said Valdés many thousands of dollars of the capital stock and negotiable bonds of the said company in payment for the said properties and interests of the said Valdés, but that the same were largely in payment for the transfer to the said company by the said Valdés of the said franchise and franchise rights in which your orator was interested as hereinbefore set forth. That the said operations of the said Valdés in connection with the incorporation of the said company and the sale by the said Valdés to the said company of the said franchise and franchise rights, were kept entirely secret by the said Valdés, and that your orator being absent from Porto Rico at and subsequent to said time, never had any knowledge or information in respect thereto or in respect to his rights thereunder until within sixty (60) days of the time of the commencement of this action, and that this action is brought by your orator as soon as he has been able to ascertain that the said Valdés had wrongfully and secretly sold and transferred the said franchise for a valuable consideration, and that your orator's rights in the premises had thus been violated.

14

IX.

That in pursuance of the said determination of the Executive Council hereinbefore set forth, the said Porto Rico Power and Light Company, which had been so incorporated through the efforts of the said defendant, presented its bid and application for the granting to it of the said concession, in accordance with the terms of the said advertisement; and that on the 4th day of January, 1906, an ordinance was passed by the Executive Council of Porto Rico granting to the said Porto Rico Power and Light Company the concession and franchise for the development and use of the said water power which had been so long contended for by the said complainant and defendant herein. That in and by the said bid and application of the said company for the granting to it of the said franchise it was urged by the said company as a reason why it should be granted the said franchise in preference to any other bidder, that it the said Porto Rico Power and Light Company was in control of the rights which might exist under the original franchise granted to the said defendant by the Executive Council on the 17th day of December, 1900, by virtue of having purchased the said franchise and all rights thereunder from the said Valdés by the said company, and in connection with the said bid and offer the said company spe-

cifically reserved its rights which it might have or be entitled to under and by virtue of the said franchise granted to the said Valdés in 1900 as aforesaid, in the event that it the said company should not be the successful bidder for the said franchise.

15 That in pursuance of the granting of the said franchise to the said company, in which said company the said Valdés, defendant, was largely interested as aforesaid, the said company has proceeded with and has at the present time practically completed the development of the said water power for the furnishing of electrical energy, in accordance with the terms thereof. That your orator has applied to the said Valdés for information respecting the said franchise and respecting the relations of your orator and the said defendant with reference thereto, but that the said Valdés, in reply to such inquiries, has maintained that all of the efforts of the said Valdés and your orator, with reference to the original applications which were made and granted, had been of no benefit or value to him in connection with the granting of the ultimate franchise, and that he the said Valdés had lost and sacrificed everything which had been ventured therewith; whereas in truth and in fact your orator alleges the truth to be that the said Valdés knowingly and intentionally concealed from your orator the fact that he had sold and disposed of the said franchise of 1900, in which your orator was jointly interested with the said Valdés, to the Porto Rico Power and Light Company in connection with other properties of the said Valdés, receiving therefor a very large amount of money, stocks and bonds of the said company. And your orator alleges that the said Valdés, defendant herein, has wholly failed and refused to make any accounting or to recognize any right or interest of your orator to any accounting with reference to the said transaction, or to recognize that your orator has any right to any such accounting or to receive any part or portion of the proceeds which he the said Valdés has received from the said Porto Rico Power and Light Company as the price of the said franchise in which your orator was so interested.

16 **X.**

Your orator alleges that the claim of the said Porto Rico Power and Light Company that the rights and interests under the said franchise granted to said Valdés in 1900 which it had so purchased, were still in force and effect was largely the cause of the said company securing the said franchise which it did so secure, and that the said company always maintained from the time of its purchase of the said franchise and the rights of said Valdés thereunder, that the same were extremely valuable and gave to the said company priorities in connection with securing the right to the use and development of the said water power over any other person or corporation.

Your orator alleges that he is entirely without any remedy at law in connection with the foregoing matters and things, and that he is compelled to resort to a court of equity for the protection of his in-

terests as to the end thereof, that your orator may have that relief to which he is entitled and which can only be granted in a court of equity. Your orator prays that the said defendant may be called upon to make answer to this your orator's bill of complaint, but not upon oath (answer under oath being hereby expressly waived,) and thereupon your orator prays the Court:

(1). That it may be ordered, adjudged and decreed by the Court that the contract and agreement entered into between your orator and the said defendant, by the terms of which it was agreed that your orator should have and receive ten per cent. (10%) of the value or amount which might be realized from the efforts of your orator and the said Valdés in securing the various franchises and concessions respecting the said Comerio water power which were so secured by the said Valdés was a valid and is a valid and
17 subsisting contract and agreement between the parties hereto.

(2). That it may be ordered, adjudged and decreed that your orator is entitled to have the specific performance decreed of the said contract and agreement, and that your orator shall have a decree in conformity with the terms thereof that he is entitled to have and receive from the said Valdés an amount equal to ten per cent. (10%) of all that has been received or of all which may be received by the said Valdés as the value or proceeds of the said franchises or concessions, or any of them, which were so secured by the said Valdés during the times when your orator and the said Valdés were so co-operating and laboring to secure the same, and particularly that your orator is entitled to have and receive ten per cent. of all moneys, stocks or bonds which may have been paid or delivered, or agreed to be so paid or delivered by the said Porto Rico Power and Light Company to the said defendant as the purchase price of the said franchise and the rights of the said Valdés thereunder which were so granted in the month of December, 1900, together with interest thereon from the date when the same was received by the said Valdés.

(3). That the Court may adjudge and decree that an accounting shall be had respecting the said sale and transfer of the said franchise and the rights of the said Valdés thereunder to the said Porto Rico Power and Light Company, for the purpose of determining the amount due to your orator with respect thereto, and that upon the determination of the said amount that your orator may have a decree for the amount thereof against the said Valdés.

(4). That your orator may have and recover of and from the said defendant his costs and expenses incurred in this behalf.

18 (5). And may it please Your Honor to grant unto your orator a writ of subpœna issued out of and under the seal of this Honorable Court, to be directed to the said Defendant, Ramón Valdés, commanding him under a certain penalty stated in said writ to be and appear before this Honorable Court, on a date to be named therein, and then and there true and perfect answers make to all and singular the matters and things alleged in the foregoing bill of complaint, and to abide such further orders,

directions and decrees as to Your Honor may seem meet and as shall be applicable to equity and good conscience; and

(6). That your orator may have and receive at the hands of the Court such other, further and additional relief in the premises as equity and good conscience directs him to receive.

And your orator will ever pray.

(Signed) HARTZELL, RODRIGUEZ SERRA,
Solicitors for said Complainant.

UNITED STATES OF AMERICA,
Island of Porto Rico, ss:

Tulio Larrinaga, being first duly sworn on his oath, deposes and says: That he is the complainant named in the foregoing bill of complaint; that he knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated on information and belief, and that as to such matters and things he verily believes the same to be true.

(Signed) T. LARRINAGA.

Subscribed and sworn to before me this 22nd day of July, A. D. 1908.

(Signed) JOHN L. GAY,
Clerk Dist. Court of U. S. for P. R.

19 Filed November 4, 1908.

In the District Court of the United States for Porto Rico.

Equity. No. 573. San Juan.

TULIO LARRINAGA, Complainant,
vs.
RAMON VALDES, Defendant.

Demurrer to the Bill.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said plaintiff's bill to be true in such manner and form as the same are therein set forth and alleged, doth demur thereto and for cause of demurrer showeth:

That as appears by the said bill the said plaintiff has a plain, adequate and complete remedy at law in and concerning the matter set forth in said bill, and that therefore the cause of action set forth in said bill is not within the jurisdiction of the Court of Equity.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant demurs thereto and humbly demands the judgment of this Court whether he shall be compelled to make any further or other answer to the said bill.

(Signed) T. D. MOTT, JR.,
Counsel for Defendant.

20 UNITED STATES OF AMERICA,
District of Porto Rico, ss:

Ramon Valdes, Jr., being first duly sworn, deposes and says: That he is the attorney-in-fact of the above named defendant, and that said defendant is at present absent from Porto Rico and in the State of New York and is unable personally to verify the foregoing demurrer; and that the foregoing demurrer is not interposed for delay, and that the same is true in point of fact.

(Signed) R. VALDES, JR.

Subscribed and sworn to before me this 4th day of November, 1908—1.30 P. M.

(Signed) JOHN L. GAY,
Clerk Dist. Court of U. S. for P. R.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

(Signed) T. D. MOTT, JR.,
Counsel for Defendant.

21 In the District Court of the United States for Porto Rico.

Equity. #573.

TULIO LARRINAGA
vs.
RAMON VALDES.

(Journal Entry—Order Overruling Demurrer.)

(March 18, 1909.)

This cause comes on for hearing on the issues raised by the demurrer to the bill of complaint, T. D. Mott, Jr., appearing for the demurrer, and Charles Hartzell against the same, and the Court having heard their arguments pro and con and being fully advised in the premises, overruled said demurrer, the respondent to answer as may be proper under the rule, to which action of the Court the respondent by his solicitor then and there duly objects and excepts.

22 Filed August 20, 1909.

In the United States District Court for Porto Rico.

Equity. No. 573.

TULIO LARRINAGA, Complainant,
vs.
RAMÓN VALDÉS, Defendant.

Answer.

The answer of Ramón Valdés, the above named defendant, to the bill of complaint of Tulio Larrinaga, Plaintiff.

The defendant, now and at all times hereafter saving to himself all and all manner of benefit or advantage of exception or otherwise that can or may be had to — taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering says:

First. The defendant admits the allegations contained in paragraph I and III of the said bill of complaint; but the defendant denies that in and about the preparation of the plans and specifications and in the securing of the necessary technical information he sought for or secured the assistance of the said complainant, as set forth in paragraph II of the said bill; and the defendant admits the other allegations contained in the said paragraph II.

Second. The defendant further admits that prior to August, 1898, he made an application to the Spanish Government for a franchise or concession to divert and use the waters of the River Plata at the Comerio Water Falls, but denies that owing to the change of
23 Government occurring at about that time, no action was taken on account of the said application so made by defendant; and the defendant also admits that in March 1899 he renewed his application and presented the same to the Military Governor of Porto Rico, and that the said application was denied upon the ground that the Secretary of War did not have authority under the law to grant the franchise or concession in the manner and form as the same had been applied for; and the defendant further admits that he then applied to the Secretary of War at Washington for a revocable license for the use of the said water power at the Comerio Falls, and that on August 1899 the Secretary of War granted to the defendant a revocable license to use the said water power.

The defendant also admits that the complainant aided and assisted the defendant in and about the prosecution of the said application for a temporary license, but denies that the complainant remained for some time in Washington applying himself exclusively in assisting the defendant in securing the said revocable license, the fact being that the said complainant was in Washington engaged in political business.

Third. The defendant further admits that on May 1, 1900, he applied to the Executive Council of Porto Rico for a franchise or concession for the use of the water power at Comerio Falls, as alleged in the said bill of complaint, but he denies that in such application he used the same plans and specifications used in the prior application. The defendant denies that in and about the prosecution of the said application he utilized the services of the complainant; and the defendant further denies that the said complainant assisted the defendant relying upon the alleged contract, and state- the fact to be that the defendant paid to the said complainant for his services in drawing the plans and specifications for carrying out the provisions of the said franchise, after
24 the same was granted, as the defendant is ready to prove.

The defendant admits that on the 17th day of December, 1900, the Executive Council of Porto Rico granted to the defendant a concession or franchise for the purposes set forth in the bill of complainant herein; but defendant denies that such franchise was so granted through any help or assistance on the part of complainant.

The defendant denies that in and about the efforts and steps taken for obtaining the said franchise of December 17th, 1900, or in the gathering and furnishing of technical information he depended entirely or in any manner whatsoever upon the complainant; and he further denies that the successful result of the application was obtained through the help and assistance of the complainant herein; and the defendant denies that the help and assistance of the complainant was rendered in accordance with the terms of the alleged agreement, and defendant states the fact to be that the said complainant gave his assistance and help under a contract of employment and received pay therefor.

The defendant denies that the complainant performed the necessary technical preparatory work, at the water falls as provided by the said franchise, and state- the fact to be that one of the reasons why the said franchise was declared forfeited was the failure of the complainant herein to do any substantial work within the time fixed by the said franchise.

And the defendant further denies the allegation that he was either unable or unwilling to expend the necessary moneys to carry on the works required by the franchise, and he denies also that the extension of time within which to comply with the terms of the said franchise were made necessary by the inability or unwillingness of the defendant to expend the moneys necessary to carry
25 on the said work; and the defendant state- the fact to be that although he was able and willing to expend the moneys necessary to carry on the work, he was prevented from so doing by the litigation then pending between the defendant and one Arpin and one Noble, which made it unsafe and dangerous for this defendant to invest his money in financing the said enterprise, and which made it impossible for the defendant to secure other capitalists to join him in financing the enterprise.

The defendant admits that the said franchise was forfeited by the

resolution passed by the Executive Council of Porto Rico in July 1902.

Fourth. The defendant admits that in compliance with the said franchise granted to him by the Executive Council of Porto Rico, he deposited with the Treasurer of Porto Rico the sum of Ten thousand dollars in cash, as a guarantee that he would comply with the terms and conditions of the said franchise, and he also admits that the said amount was afterwards returned to the defendant, who substituted therefor negotiable securities for an equal amount.

The defendant further admits that by the resolution of July, 1902, passed by the Executive Council of Porto Rico, forfeiting the said franchise, it was provided and stipulated by the said council, in and by the said resolution, that the said sum of Ten thousand dollars deposited by defendant, should be returned to him; but the defendant denies that the said resolution so providing and stipulating was passed or adopted by any aid or assistance or efforts on the part of the complainant herein; and the defendant states the fact to be that the said complainant had nothing whatever to do with the passage or adoption of the said resolution.

26 Fifth. The defendant admits the allegations of paragraph VII as to the granting of the franchise to one Yaeger, who in turn sold and assigned the same to the Vandergrift Construction Company; but defendant denies that complainant made any protests at any time against the legality of the said franchise to the said Yaeger or the said Vandergrift Construction Company, or against the legality of the said franchise or that he ever maintained that the franchise granted to defendant was in force and effect and that the Vandergrift franchise was illegal and invalid.

The defendant denies that the said complainant was active and diligent in protesting against the granting of the Vandergrift franchise or on the opposition thereto or in assisting the defendant.

The defendant admits that when the protest against the Vandergrift franchise was carried to the President of the United States the complainant assisted the defendant in and about the opposition to the said franchise and the application for the annulment thereof; but defendant denies that the said complainant represented the defendant as the protestant, and he further denies that the order of annulment of the Vandergrift franchise was approved through the efforts of the said complainant. And defendant states the fact that complainant's services in and about the said matter were rendered at a time when the said complainant was the resident Commissioner of Porto Rico in Washington; and that said services were rendered on account of the personal friendship existing between the defendant and the said complainant, and without any expectation of remuneration for such services.

Sixth. The defendant admits the allegations of paragraph VIII of the said bill of complaint as to the passage of the law of 1905 by the legislative Assembly of Porto Rico and also as to the

27 passage of the Resolution of August 8, 1905 by the Executive Council of Porto Rico.

The defendant admits that prior to the time for advertising for

bids for a franchise for the said water power, he negotiated or had been negotiating with certain capitalists and other persons in the United States for the formation of a new company, for the purpose of having said company buy certain properties of the defendant, but defendant denies that such properties included the said franchise which had been granted to the said defendant in the year 1900; and the defendant further denies that the said negotiations were carried on secretly or without the knowledge of complainant.

The defendant admits as he is informed and believes, that a corporation called and known as the Porto Rico Power and Light Company was organized under the laws of the State of Maine, but the defendant denies that the said Company was so organized in pursuance of any efforts on the part of this defendant.

The defendant admits that the said corporation called and known as the Porto Rico Power and Light Company purchased from the defendant certain properties belonging to the said defendant, but the defendant denies that he assigned to the said company all his right, title, and interest, if any he had, under the said franchise.

The defendant denies that the said corporation known as the Porto Rico Power and Light Company, was incorporated and organized by this defendant and his associates; and the defendant states that he has no knowledge or information sufficient to form a belief as to the purposes for which the said company was organized or as to the intention of the incorporators of the said company in organizing the same.

28 The defendant further admits that the said Porto Rico Power and Light Company agreed to pay and afterwards did pay to the defendant twenty eight thousand dollars in mortgage bonds of the said company and also the sum of one hundred and three (103) thousand dollars in stock of the said company in consideration of and in payment for the transfer of certain properties belong- to the defendant; but the defendant denies that such agreement to pay and the subsequent payment of one hundred and thirty one thousand dollars in stock and bonds of the said company were made in consideration of and in payment for the transfer by the defendant to the said company of the said franchise and franchise rights, forfeited by resolution of the Executive Council. And the defendant states the fact to be that the said franchise and franchise rights so forfeited as aforesaid were never sold by defendant to the said company.

The defendant denies that he made any operations in connection with the incorporation of the Porto Rico Power and Light Company, and he also denies that the sale from him to the said Company, was kept secret; and the defendant states the fact that the said complainant had knowledge and information in respect to such sale at the time when the same took place, as defendant is ready to prove.

Seventh. (The defendant denies that the said Porto Rico Power and Light Company, was incorporated through defendant's efforts; and defendant admits that the said company presented its bids for the granting of the said franchise in accordance with the terms of the advertisement published by the Executive Council of Porto Rico,

and that on January 4, 1905, a concession and franchise was granted to the said Company for the use and development of the water power at Comerio.

29 The defendant alleges that it has no knowledge or information to enable him to form a belief as to what was urged by the Porto Rico Power and Light Company in and by its said bid and application for a franchise to use and develop the said water power at Comerio, as a reason why it should be granted the said franchise in preference to any other bidder, not as to what was specifically reserved by the said Company in connection with its said bid and offer.

The defendant admits that the said Porto Rico Power and Light Company, has proceeded with and has completed the development of the said water power at Comerio, in pursuance with the granting of the said franchise and in accordance with the terms thereof; but the defendant denies that he was largely interested in the said Company, except as stockholder and bondholder of the said company.

The defendant denies having knowingly and intentionally concealed from the complainant the fact that he, the defendant, had sold and disposed of the said franchise of 1900, to the Porto Rico Power and Light Company, the fact being that defendant never sold such franchise to the said corporation; and he further denies having received therefor a very large or any amount of money, stock and bonds of the said Company known as the Porto Rico Power — Light *and* Company.

Eighth. The defendant further answering the bill of complaint herein says, that he has no knowledge *of* information upon which to form a belief as to what was the cause of the said Porto Rico Power and Light Company securing the franchise which it did secure, or as to what was maintained by the said company in connection with its said application.

As a further defense to the bill of complaint herein the defendant alleges:

1. That the contract and agreement entered into between
30 the complainant and the defendant, prior to August 1898, and the specific performance of which is prayed for in the said bill of complaint, cannot be specifically enforced against this defendant and can give the plaintiff no cause of action either at law or in equity because the said contract or agreement is illegal and void being against public policy and good morals for the reason that at the time the said contract was made the said complainant was holding the office of Subsecretario de Fomento (Assistant Secretary of the Interior) under the Spanish Government and had under his charge all applications for franchises and concessions, and had to act for the government in the matter of granting or denying the applications for franchises. And the defendant alleges that it was illegal and *im*moral for the complainant as such Subsecretario de Fomento, to enter into a contract or agreement whereby he was to receive a share of the profits made in a franchise or concession granted by the Department of which he was at that time a member.

2. That the complainant is not entitled to the relief prayed for in

his said bill of complaint, nor to any other relief, either at law or in equity, for the reason that the aforesaid contract or agreement made and entered into between the complainant and the defendant prior to August 1898, was fully performed and terminated by the resolution of the month of July, 1902, passed by the Executive Council of Porto Rico, declaring the said franchise of December seventeenth, 1900, granted to the defendant to be forfeited; and that by virtue of the said forfeiture so declared by resolution of the said Executive Council of Porto Rico, the defendant lost all his rights and interests in the said franchise, and he also lost all his efforts, time and everything he had ventured in the enterprise, including the moneys paid by the defendant to the compañinant for his services; and that
31 by reason of the said franchise being declared to be forfeited, as aforesaid, the defendant did not derive any profit or benefit therefrom, and therefore the Complainant is not entitled to have any accounting because there is no amount due to the complainant from this defendant.

3. That after the forfeiture of the said franchise of December 17, 1900, the defendant refused for some time to recognize the validity of the action taken by the Executive Council, for the reason that he believed that in as much as compliance with the terms and conditions of the said franchise was prevented by the litigation of the said Arpin and Noble, over which he had no control, the Executive Council had no power or authority to forfeit the said franchise; but that he, the defendant, having consulted with his counsel, *he* was advised by the said Counsel that the Executive Council had power to declare the said franchise to be forfeited in the way and manner in which it was done, and that he, the defendant, had lost all rights thereunder, whereupon the defendant gave up his opposition to the said resolution of the Executive Council and withdrew his bond of ten thousand dollars in negotiable securities which had been deposited by him as a guarantee for the performance of the terms and conditions of the said franchise.

4. The defendant further says that in and prior to the first day of June 1905, the defendant was the owner of certain properties in the Island of Porto Rico, amongst which was included the Electric Light Plant in the city of San Juan, and certain lands in the vicinity of the Comerio Falls; that in or about the aforesaid date, the Porto Rico Power and Light Company, a corporation organized under the Laws of the state of Maine, made propositions to the defendant for the purchase by the said corporation from the defendant of all the aforesaid properties owned by the defendant in the Island of
32 Porto Rico; that the properties so sold by the defendant, to the said corporation by deed dated June 1st 1905, executed before Martin Travieso, Jr. Notary Public in and for the County of New York, were the following:

A. A piece of land situated in the ward of Doña Elena, Municipality of Comerio, with an area of 24 acres of land, equivalent to 9 hectareas, 79 areas, 14 centiareas, and bounded on the North by lands of Antolina Gonzalez; on the South by other lands of Agustin Maldonado; on the East by the Rio de la Plata and on

the West by lands of Francisco Negrón. The said property is registered under number 443 at folio 166, Volume 9, inscription number sixth.

B. A piece of land situated in the ward of Doña Elena, Municipality of Comerio, with an area of six cuerdas more or less, that is two hectareas, 35 areas 82 centiareas, bounded on the East by the River de la Plata; on the South, by lands of Pedro del Valle; on the West by lands of José Martinez and on the North by the creek of Las Mulas. The said property is registered under number 508, at folio 241, Volume 10 of Comerio, inscription No. 3.

C. A strip of land situated in the Western bank of the La Plata River, with an area of half a cuerda of land, and which forms a part of a piece of land situated in the Ward of Doña Elena, Municipality of Comerio, with a superficial area of five acres and which is bounded on the East by the La Plata River, on the North by lands of Don Ramón Valdés y Cobián and on the West and South by other lands of Agustin Maldonado.

D. The easements and concessions for doing, without any limitation, the works that he may deem necessary, upon the properties situated on the bank of the La Plata River, belonging to Don Pedro del Valle y Franco, Don Juan Dionisio Morales, for the purpose of utilizing the waters of the said River, as it more fully appears from the deeds executed by the said Don Pedro del Valle y Franco and Don Juan Dionisio Morales, before the Notary of the town of Bayamón Don Tomás Valdejuli y Calatraveño, on the 6th day of July, 1898.

The defendant further alleges that the price of the scale and transfer of the said properties by the defendant to the Porto Rico Power and Light Company was twenty eight thousand dollars ($28,000) in bonds and one hundred and three thousand dollars ($103,000) in stock of the said corporation; and that it was stipulated that the said bonds and stock should not be delivered to the defendant until the Porto Rico Power and Light Company acquired and was
33 in possession of the franchise or concession which the defendant had acquired from the Executive Council.

That thereafter, the said Porto Rico Power and Light Company made an application to the Executive Council of Porto Rico for a franchise or concession of the right to develop the water power known as "Comerio Falls," situated on the "La Plata River," for the generation of electrical energy, and to build, construct, erect and maintain lines of wires for transmitting and distributing electrical energy for commercial and industrial purposes; and that the said franchise was granted to the Porto Rico Power and Light Company and approved by the Executive Council of Porto Rico on the 4th day of January, A. D. 1906.

The defendant further says that in and by the terms of the said franchise so granted to the Porto Rico Power and Light Company, as aforesaid, it was expressly provided that the granting of the said franchise shall no- be deemed in any sense a recognition of any right or claim made by Ramón Valdés, or any Company, or Corporation,

to any previous grant or concession of the water power at Comerio Falls.

Wherefore this defendant having fully answered, confessed, traversed, and avoided or denied all the matters in the said bill of complaint material to be answered, according to his best knowledge and belief, humbly prays this honorable Court to enter its Judgment, that this defendant be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained and for such further and other relief in the premises as to this honorable Court may seem meet and in accordance with equity.

(Signed) MARTIN TRAVIESO, JR.,
Solicitor for Defendant.

34 ISLAND OF PORTO RICO.
District of San Juan, ss:

Ramón Valdés, being first duly sworn says:

That he is the defendant in the foregoing answer; that he has read the said answer and knows its contents, and that the same is true of his own knowledge, except as to the matters therein alleged upon information and belief, and that as to those matters he believes it to be true.

(Signed) R. VALDES.

Subscribed and sworn to before me, by Ramón Valdés, of full age, married, resident of San Juan and to me personally known, this 25th day of August, 1909.

(Signed) JOHN L. GAY,
[SEAL.] *Clerk Dist. Court of U. S. for P. R.,*
(Signed) By C. A. DAVIDSON, *Deputy.*

35 Filed August 31st, 1909.

In the District Court of the United States for Porto Rico.

TULIO LARRINAGA, Complainant,
vs.
RAMON VALDES, Defendant.

This replicant, Tulio Larrinaga, saving and reserving to hisself all and all manner of advantages of exception which may be had — taken to the manifold erro-s, uncertainties and insufficiencies of the answer to the defendant, Ramon Valdez, for replication thereunto saith that he doth and will aver, maintain, and prove his said bill to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto,

confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain, and prove as this honorable Court shall direct and humbly prays as in and by his said bill he hath already prayed.

(Signed) HARTZELL, RODRIGUEZ SERRA,
Solicitors for Complainant.

36 In the District Court of the United States for Porto Rico.

TULIO LARRINAGA
versus
RAMON VALDES.

Transcript of Testimony.

Index of Witnesses.

* * * * * * *

38 In the District Court of the United States for Porto Rico.

No. 573, Equity.

TULIO LARRINAGA
vs.
RAMON VALDES.

JUNE 7, 1912.

Transcript of Testimony.

Mr. Molina reads the bill of complaint.

Mr. TRAVIESO: Before reading the answer, I wish to reproduce my demurrer to the bill upon the ground that this is a case in which the complainant has a full, adequate and complete remedy at law for the recovery of any amount that he may be entitled to under the contract alleged in the complaint. I believe that this is not a proper case for the specific performance of a contract which has been fully performed on the part of the complainant, as shown by the bill. The only thing remaining to be done, according to the bill itself, being the payment of money by the defendant to the complainant, which money may be recovered just as well in an action of assumpsit or in an action for money had and received for the benefit of the complainant.

The COURT: The demurrer is overruled on the ground, first, that

fraud is charged, at least, legal fraud is charged by the bill,
39 and a partnership or profit sharing contract is alleged and set up and admitted by the demurrer, as are all other facts properly plead in the bill. It is therefore clearly a case for equitable jurisdiction, and, in the opinion of the Court, no adequate remedy existing at law, the demurrer will be overruled.

Mr. TRAVIESO: Note my exception.

Reads the answer.

TULIO LARRINAGA, being called as a witness in his own behalf, was duly sworn and testified as follows:

Direct examination by Mr. PAINE:

Q. Please state your name?
A. Tulio Larrinaga.
Q. Where do you live, Mr. Larrinaga?
A. San Juan, or rather Santurce.
Q. What is your occupation?
A. Civil engineer.
Q. How long have you practiced the profession of civil engineer?
A. Ever since 1870, the last forty-two yaers.
Q. Now where were you in the year 1898?
A. 1898, I was here; I must have been here in Porto Rico. I guess I was in Mayaguez in the first part and then I came to San Juan in the month of February.
Q. Do you remember whether you occupied an official position at that time?
A. I did, sir.
Q. What was it?
40 A. My position was Under-Secretary of Interior.
Q. Under-Secretary of Interior?
A. Yes. Assistant Secretary of the Interior. That corresponds to that at present.
Q. Up to what time did you occupy that position?
A. Several months, for several months, I believe until some time the latter part of the year, September or something like that.
Q. That was the year 1898?
A. 1898, the same year.
Q. After leaving that position, what, if any, position did you occupy?
A. After that?
Q. Yes.
A. I resigned that position and accepted to be engineer in the dredging of the harbor works.
Q. What was the nature of that position? What were your duties?
A. To attend to the technical part of the dredging of the harbor works and everything else, merely technical.
Q. Was it any part of your position to take any part in behalf of the government in the granting of franchises or concessions?

A. Not at all; the harbor works were at the time more a private corporation. It was administered by a board of merchants here in Porto Rico.

Q. Under the Spanish law of ports?

A. Under the Spanish law of ports, but it was merely a private corporation by a board of merchants and sustained by the
41 right to charge fifty cents on every ton of freight that came in port.

Q. Do you know Mr. Ramon Valdes?

A. I do. I have known him for many years.

Q. Did you know him in 1898?

A. I did; yes, sir.

Q. What were your relations at that time?

A. He had consulted me several times about his enterprises here. I remember having made a trip to Europe with him, and all the time I was helping him and advising him about some bronze and metals he was going to sell in Spain, and all of that.

Q. At that time did Mr. Valdes make any proposition to you about the issues in this case?

A. He did several times and I refused on account that at the time I was Assistant Secretary of the Interior, and that you will find confirmed by a letter there.

Q. After your resignation of your position as Assistant Secretary of the Interior, did or did not Mr. Valdes continue to make proposals to you?

A. Yes, he did, and you will find a letter there wherein he says: Now, that you don't hold any official position——

The COURT: Hold on, don't testify as to the contents of the letter.

Mr. PAINE: We will put the letter in evidence, Your Honor. (Handing a letter to counsel for the defendant.) I will ask Mr. Travieso if he intends to dispute this signature.

Mr. TRAVIESO: No.

42 Mr. PAINE: The signature is admitted as the signature of the defendant.

The letter in question is marked by the Stenographer: A for the complainant for identification.

Q. (Handing the letter just marked to the witness.) Mr. Larrinaga, I ask you if you received this letter dated October 30, 1898, and marked for identification: A for complainant, from Mr. Valdes.

A. Yes, sir; I remember.

Q. You received that letter did you?

A. Yes, sir; I did. It is so important that I could not forget it.

Mr. PAINE: I now offer this in evidence.

The COURT: Any objection?

Mr. TRAVIESO: No objection.

Mr. Paine reads the letter in question to the Court and it is placed in evidence and marked: Exhibit A for the complainant.

Q. Now did you make any reply to that letter, Mr. Larrinaga?

A. I did, sir, accepting the terms.

The COURT:

Q. In writing?

A. In writing, common writing, handwriting, as his letter is.

Mr. PAINE:

Q. Did you keep a copy of that letter?

A. I did not because we didn't keep a typewriter. It is just in handwriting as his is.

Mr. TRAVIESO: I am willing to produce the original, Your Honor.

Mr. PAINE: We would like to call on him for it.

A. I don't think I used a machine.

43 Mr. TRAVIESO produces the letter in question.

The COURT: Is that in Spanish?

Mr. PAINE: Yes, Your Honor.

The COURT: It can't be offered in evidence until it is translated.

Mr. PAINE: Could I offer it in evidence subject to filing a translation later?

The COURT: Yes, you may have the witness identify it and the Interpreter read it.

Q. (Handing the letter in question to the witness:) Mr. Larrinaga, I will ask you if this letter addressed to Ramon Valdes, dated October 31st, is your reply to the letter just introduced in evidence, signed by Mr. Valdes.

A. That is all right. It is correct.

The COURT: The Translator will kindly read that.

The Translator then translated the same into English for the Court.

Mr. PAINE: I offer that letter in evidence, subject to translation by the Official Translator.

The COURT: Any objection?

Mr. TRAVIESO: No objection.

The letter was then placed in evidence and marked: Exhibit B for the complainant.

Q. Now what was the nature of this franchise that it was proposed to secure?

A. The nature was this, Mr. Valdes had made an application in the Spanish times with preliminary plans and sketches made by the Spanish engineer, and he was trying to get the franchise to utilize for water power the waters of the Comerio Falls,

44 known as the 'Salto de Comerio.'

Q. At what point, Mr. Larrinaga, approximately

A. About three miles from the town of Comerio on the Bayamon-Comerio road.

Q. Do you know where the present power plant is?

A. The very same place, on the same site, with the same technical conditions with a very few differences.

Q. Then continue and describe particularly the nature of the franchise.

A. The nature of the franchise was this; Mr. Valdes was to be granted the building of a dam about forty or fifty meters wide to dam up the waters of the River Plata and carry them through a canal or a tube. My original plan was a tube, then it was changed to a tunnel, I think it was an error, to take them down about 900 meters and there to be dropped into turbines to generate power. That power——

Q. I would not go at present into the technical requirements. I mean in a general way the purpose of the franchise.

A. I misunderstood the gentleman. It was to derive use of water to produce electric energy to conduct it to San Juan and all the cities that it passed by, and use it for lighting and power and sell it to the general public.

Q. In connection with the application for a franchise of that nature, was the work and knowledge of a technical man required?

A. Sure, since the original application only required those sketches made by the Spanish engineer to accompany the first application, Your Honor will understand why it was necessary or required to have an engineer.

45 The COURT: It is perfectly obvious that you cannot impound waters and conduct them and transform them into electrical energy without the technical services of an expert.

Q. Now, Mr. Larrinaga, please state in a summary way what work you did in pursuance of your agreement with Mr. Valdes to assist him in obtaining this franchise.

A. In the first place, as the gentlemen have noted in my letter here, my duty was only what referred to the technical help, but through Mr. Valdes asking me, I had to take a good deal of participation in many things that were not technical. In the first place, Mr. Arpin and Noble contested the right of Mr. Valdes to the franchise, as they claimed they owned lands, and that those lands along the river, they held the riparian rights of those. I had to go several times with Arpin and Noble there, surveying the properties, discussing the points, and in a little book you will find there, you will find even some agreement signed between Mr. Noble and I. In that connection——

Q. Just a moment. I show you a small book marked for identification, C for the complainant, and ask you if that is the book to which you refer.

A. Yes, sir; among the many controversies that I had with the different owners of lands to contest the concession of Mr. Valdes, and later I had one very difficult, very hard, with Mr. Noble. We went there several times, and this is just the signature of Mr. Noble where he agreed to the points in the survey we made with him. This is in 1899.

The COURT:

Q. Are the entries made in your handwriting?

46 A. Yes, and the signature is there of Mr. Noble. I guess the writing is my own (referring to the book); yes, sir.

Mr. PAINE:

Q. Mr. Noble signed that in your presence?

A. Yes, sir; and here it is, (pointing to the signature of Mr. Noble).

Mr. PAINE: I offer that in evidence.

Mr. TRAVIESO: No objection.

The note book in question was then placed in evidence and marked: Exhibit C for the complainant.

Q. Kindly state briefly as you can, in a general way, what other technical work you did in that connection.

A. In that connection I did a good deal of technical work.

Q. Did you do everything that Mr. Valdes called on you to do?

A. Everything.

Q. Did you do everything that in your opinion was necessary or advisable in connection with the matter?

A I did, because we had to show to different companies in the United States who were trying to take up the works; I had to go there and do everything for them technically, and only one company, The River Plata Company, of Philadelphia, paid me $250.00,—you will find a letter there from them—to pay the help. The work was diggings and actual work on the power house, and of course I had to pay men and I had to pay help, and those $250.00 were paid to me by Mr. Sinclair representing the River Plata Company, and in a letter there you see that he furnished or left the money with Mr. Valdes for the expenses alone, so I have that. I had to borrow more money from Mr. Valdes to cover it.

47 Q. Did you do any other work besides technical work as an engineer in helping to obtain this franchise?

A. Yes, sir; I remember on many occasions having gone before the Executive Council. I believe lawyer Hartzell was then connected with it, and I believe attorney Sweet, and I had to make the sketches and plans to explain to the Executive Council the rights of Mr. Valdes against his other competitors.

Mr. PAINE: Mr. Travieso admits the signature of Mr. Valdes on this letter.

The COURT: Is it translated?

Mr. PAINE: Yes, it is translated, and I offer in evidence a letter signed by Mr. Ramon Valdes, the defendant herein, dated Bayamon, Porto Rico, April 11, 1899, which reads as follows. (Reads same to the Court).

The letter in question was then placed in evidence and marked: Exhibit D for the complainant.

Mr. MOLINA:

Q. Now that letter says that you should go ahead with everything. Did you comply with that request?

A. Certainly, and there were a good many incidents occurring.

Q. What did you have to do to carry out the work requested in that letter?

A. To oppose the other parties.

Q. What other opposition was there?

A. The first opposers were Arpin and Noble, who were trying to get the franchise. I haven't looked at these papers or devoted a single thought to it for years.

Q. (Handing a paper to the witness) Do you recognize this letter?

A. Yes, sir; this was the letter of the Secretary of the Interior. Then Mr. Arpin wrote the interested party to send their expert
48 there to do the surveying necessary to verify that the plans were correct and all of that, and I had to appear. Mr. Pedro Fernandez I remember was the engineer for the government, and I was for Mr. Valdes.

Mr. MOLINA: I offer it in evidence.

The COURT: Any objection?

Mr. TRAVIESO: No objection.

The letter in question was then placed in evidence and marked: Exhibit E for the Complainant.

Q. Now after the contention with Arpin and Noble which is referred to in that letter, do you remember what you proceeded to do then?

A. This is so long back that I——

Q. I will ask you a different question. (Handing another paper to the witness) Do you remember having received this letter?

A. Yes, sir.

Mr. MOLINA: I offer this. All these letters go to show the correspondence between Mr. Valdes and Mr. Larrinaga. (The letter is handed to counsel for the defendant).

Mr. TRAVIESO: No objection.

The COURT: What is the date of that?

Mr. MOLINA: This is the 15th of February, 1901.

Reads letter to the Court and it is placed in evidence and marked Exhibit F for the complainant. In the rearrangement of the exhibits in chronological order, this letter is marked: Exhibit H for the complainant.

49 Q. Now, Mr. Larrinaga, so as to clarify matters, how many franchises were there that Mr. Valdes with your assistance made application for?

A. In the first place, Mr. Valdes, after having the refusal from the Governor here to get a temporary franchise, went to Washington. He remained there for several months and couldn't do anything. He called for my assistance, I went, and in a few days I obtained from the Secretary of War, Secretary Root, a revocable license.

Q. How many distinct franchises were there?

A. That would be one; then he let that lapse.

Q. That is the revocable license?

A. The revocable license. Then he got one some time afterwards

from the Executive Council and he let that lapse, and I believe those are the only two that he got, but he went on applying for and trying or one in which he had to fight Mr. Yeager and the Vandergrift Construction Company.

Q. Before coming to that Yeager incident, I will introduce these letters in evidence and start to read them (producing several letters and handing one to the witness).

Mr. MOLINA: Is there any objection to them, Mr. Travieso?

Mr. TRAVIESO: Not at all; all those are admitted.

A. This is the letter in which he admitted that I was right and the other engineers were wrong.

Q. I just want to know whether you recognize that.

A. Yes.

Mr. MOLINA: Do you consent to the admission of these letters?

Mr. TRAVIESO: Yes, all of them.

50 Mr. MOLINA: The complainant offers letter dated, Philadelphia, March 8, 1901, signed by Mr. Ramon Valdes and addressed to Mr. Tulio Larrinaga.

In the absence of objection on the part of counsel for the defendant, this letter is placed in evidence and marked: Exhibit G for the complainant. In the rearrangement of the exhibits in chronological order, this letter is marked: Exhibit I for the complainant.

Mr. MOLINA: I offer letter dated, Philadelphia, March 1, 1901, signed by Mr. Ramon Valdes and addressed to Mr. Tulio Larrinaga.

In the absence of objection on the part of counsel for the defendant, this letter is placed in evidence and marked: Exhibit H for the complainant. In the rearrangement of the exhibits in chronological order, this letter is marked: Exhibit J for the complainant.

Mr. MOLINA: I offer letter dated, Philadelphia, February 8, 1901, signed by Mr. Ramon Valdes and addressed to Mr. Tulio Larrinaga.

In the absence of objection on the part of counsel for the defendant, this letter is placed in evidence and marked: Exhibit I for the complainant. In the rearrangement of the exhibits in chronological order, this letter is marked: Exhibit G for the complainant.

Mr. MOLINA: I offer letter dated, Philadelphia, January 25, 1901, signed by Mr. Ramon Valdes and addressed to Mr. Tulio Larrinaga.

In the absence of objection on the part of counsel for the defendant, this letter is placed in evidence and marked: Exhibit J

51 for the complainant. In the rearrangement of the exhibits in chronological order, this letter is marked: Exhibit F for the complainant.

Mr. MOLINA: I offer letter dated, New York, July 29, 1901, signed by Mr. Ramon Valdes and addressed to Mr. Tulio Larrinaga.

In the absence of objection on the part of counsel for the defendant, this letter is placed in evidence and marked: Exhibit K for the complainant. In the rearrangement of the exhibits in chronological order, this letter is marked: Exhibit K for the complainant, as originally marked.

Mr. MOLINA: I offer letter dated, New York, May 10, 1905, signed by Mr. Ramon Valdes and addressed to Mr. Tulio Larrinaga.

In the absence of objection on the part of counsel for the defendant, this letter is placed in evidence and marked: Exhibit M for the complainant. In the rearrangement of the exhibits in chronological order, this letter is marked: Exhibit N for the complainant.

Mr. MOLINA: I offer letter dated, New York, April 22, 1905, signed by Mr. Ramon Valdes and addressed to Mr. Tulio Larrinaga.

In the absence of objection on the part of counsel for the defendant, this letter is placed in evidence and marked: Exhibit F for the complainant. In the rearrangement of the exhibits in chronological order, this letter is marked: Exhibit M for the complainant, as originally marked.

Mr. MOLINA: I next offer letter dated, San Juan, June 20, 1905, signed by Mr. Ramon Valdes and addressed to Mr. Tulio Lar-
52 rinaga.

In the absence of objection on the part of counsel for the defendant, this letter is placed in evidence and marked: Exhibit N for the complainant. In the rearrangement of the exhibits in chronological order, this letter is marked: Exhibit P for the complainant.

Mr. MOLINA: I next offer letter dated, New York, May 29, 1905, signed by Ramon Valdes and addressed: My dear Don Tulio.

In the absence of objection on the part of counsel for the defendant, this letter is placed in evidence and marked: Exhibit O for the complainant. In the rearrangement of the exhibits in chronological order, this letter is marked: Exhibit O for the complainant, as originally marked.

Mr. MOLINA: I next offer letter dated, New York, December 13, 1906, signed by Mr. Ramon Valdes and addressed to Mr. Tulio Larrinaga.

In the absence of objection on the part of counsel for the defendant, this letter is placed in evidence and marked: Exhibit P for the complainant. In the rearrangement of the exhibits in chronological order, this letter is marked: Exhibit S for the complainant.

Mr. MOLINA: I next offer letter dated, Washington, July, 1905, it has no other date, written from the Hotel Arlington, Washington, D. C.

In the absence of objection on the part of counsel for the defendant, this letter is placed in evidence and marked: Exhibit Q for the complainant. In the rearrangement of the exhibits in chronological order, this letter is marked: Exhibit Q for the complainant,
53 as originally marked.

Q. Have you ever received any pay from Mr. Valdes for your services rendered in this action?

A. Not from Mr. Valdes; I received money from Mr. Sinclair, some $200.00, to pay for the expense of some work that I was doing for them.

Q. Did you ever receive any pay for your services under the contract to pay you ten per cent.?

A. No, sir; I never did.

Q. Without going into detail and taking the time of the Court, all of the work that was done, did you do everything that was requested of you by Mr. Valdes from the date of this agreement down

until the final date of the obtaining of the franchise by the Porto Rico Power & Light Company?

A. I believe I did a good many more things than my share, to go to the Secretary of War, and go from New York to Washington to try to get a franchise, I think are not the part of the technical engineer, but I did it, I was willing to do it.

Q. Did Mr. Valdes ever notify you that he intended to sell out to the Porto Rico Power & Light Company?

A. No, sir; he did to the River Plata; he did to Mr. Dressler, but all of that fell through, but when he came to deal with them he never said anything to me; I was in Washington, I had already been appointed.

Q. Where were you when he signed the contract of 1905?

A. I was in Washington I believe; I was already Resident Commissioner.

Q. Did Mr. Valdes ever himself notify you about this transfer?

54 A. No, sir.

Q. Did you or did you not obtain your information as to this transfer from him or from other parties?

A. I honestly don't know how I came to know that the deal had been made.

Q. Can you remember, more or less, when you found out about this transaction?

A. Not the date.

Q. Was it some time after June 1, 1905?

A. After I came to Porto Rico I found it out, and then I went to lawyer Hartzell and Mr. Rodriguez Serra to take up the case for me. It was current; everybody knew that Valdes had sold here, and of course I learned.

Q. Have you ever made any request or demand on Mr. Valdes for payment under this contract that has been put in evidence?

A. Yes, there must be several letters there asking him to fulfill his part of the contract.

Q. What reply did he make?

A. Yes, I remember the reply, that all my work and his was lost.

Q. Did he give any reason for saying that?

A. Yes, he said that the franchise had been revoked; that I had lost my work and he had lost his work, or his money, I forget which, or both, and therefore I had lost everything, and I had no claim on him, or something to that effect.

Mr. PAINE: Complainant offers in evidence, there being no objection on the part of the defendant, the original contract between Ramon Valdes and J. G. White & Company Incorporated, the same being dated January 14, 1905. Evidently we have been
55 in error on the date. I thought it was in June, 1905. Of course we have never had a copy of this and we had to go on our information and belief as to when it was executed.

In the absence of objection on the part of counsel for the defendant, the contract in question is placed in evidence and marked: Exhibit R for the complainant. In the rearrangement of the exhibits

in chronological order, this contract is marked: Exhibit L for the complainant.

The COURT: Are you going to read it?

Mr. PAINE: Yes, I will read it, Your Honor.

The COURT: Just summarize it.

Mr. Paine reads a portion of the contract just introduced in evidence.

Mr. PAINE: We offer in evidence a certified copy of the petition made by the Porto Rico Power & Light Company to the Executive Counsel of Porto Rico, under date of October 26, 1905, there being no objection by the defendant, and from that, Your Honor, I will read what we consider as the material paragraph. This is the petition whereby the new company applied for the new franchise. "The undersigned further begs to submit for your consideration the fact that it controls the rights which may exist under a certain franchise granting to one Ramon Valdes the right to use the waters of the Rio de la Plata, and to develop the same, which said franchise
56 was granted by your Honorable Body on the 17th day of December, 1900, and approved by the Governor on the 18th day of December, 1900, and of which franchise the undersigned company is the assignee, by assignment of said Valdes to this company, dated June 1, 1905.

The petition in question was then placed in evidence and marked: Exhibit S for the complainant. In the rearrangement of the exhibits in chronological order, this petition is marked: Exhibit R for the complainant.

Q. Now, Mr. Larrinaga, I first call your attention to the three parcels of property——

Mr. TRAVIESO: Mr. Paine, before you go ahead I want to enter an objection to this document, as being a statement made by the Porto Rico Power & Light Company, and not by Mr. Valdes, as to being the assignee of the franchise. Upon that ground, I don't believe it is binding upon Mr. Valdes, and I object for that reason.

Mr. PAINE: It is a public document, and, while Mr. Valdes does not appear as a petitioner, it was filed in the archives of the Executive Council where it was a public document. It must be presumed that Mr. Valdes knew of this representation, and, unless the defendant can make it appear that he denied that statement, it is binding on him.

The COURT: The objection will be overruled on the ground that one of the recitations and part of the consideration for the contract, being complainant's Exhibit R, is the assignment and trans-
57 fer of the franchise mentioned and herein objected to as evidentially affecting the defendant here. The defendant is bound by his own admission solemnly made in the contract, complainant's Exhibit R, and the document will be received as showing what officially was done in consequence of the engagements, mutual engagements, between the assignor of the Porto Rico Power & Light Company and the complainant in relation to the franchise.

Mr. TRAVIESO: Note an exception.

The COURT: Yes, he does that automatically.

Q. Now I call your attention, Mr. Larrinaga, to section (*b*) of the consideration set forth in the contract, Exhibit R, viz. (*b*) Certain lands and buildings thereon, standing in the name of said Valdes, in the Barrio "Dona Elena". (*c*) Certain easements in and over lands to be used in connection with said power development. (*d*) Certain options for acquisition of lands affected by said easements and convenient for such purposes, being all of the consideration mentioned in that contract, except the concession, and ask you if you are familiar with those properties therein listed.

A. More or less; certain buildings and lands, they were shacks and all of that. Certain easements; he had acquired some from some of the land owners, in which I was instrumental, as I have stated before, going with the interested party there, accompanying men there, all people like Mr. Noble and Arpin there, and those had been settled in some way, and some previous to that, just in the beginning, not in my time, he had them all right,
58 some of them; and (*d*) certain options for acquisition of lands affected by said easements——

Q. Do you know what those lands were, affected by the options?

A. I do not; I do not; I did at the time, but it is so long back that I cannot remember.

Q. How long have you lived in Porto Rico, Mr. Larrinaga?

A. All my life except the six years in Washington and a trip to Europe.

Q. Have you been practicing your profession as an engineer during the most of your life in Porto Rico?

A. All the time except the time I was away.

Mr. PAINE: I ask if there is any objection to using Mr. Larrinaga as to the value of these properties.

Mr. TRAVIESO: No.

Q. Then I will ask you to give the value of these properties (*b*), (*c*), and (*d*).

The COURT: You will have to qualify that, for use in connection with the business for which they were obtained.

Q. For use in connection with the business for which they were obtained.

A. It is a very difficult proposition, sir, to say the value of a property in connection with something else. Of course the absolute value of this as agricultural property is nominal, a few dollars per acre; five, ten or fifteen would not have been at the time the value of the agricultural land there because they are very abrupt, rugged, but in connection with the franchise they are valuable, very valuable.

The COURT:

Q. Could the project have been carried out and the waters impounded without the possession of these lands and easements?

59 A. Hardly so; it would have taken such terrible works, as for instance, a viaduct through the bed of the river, carrying that on pillars, something ridiculous to think of.

Mr. PAINE: I will put another question this way. What would

be the value of that property without a franchise to operate the plant for which they were destined?

A. I do not recall now the extent, but, as I told you before, a few dollars an acre, and this in a stretch of 900 meters, which would make about 1200 yards long, by a few yards wide, would not go beyond several acres, several acres at a few dollars.

Q. Do you know what Mr. Valdes paid for those properties?

A. Very little, because it was most of it in the Spanish times when nothing of the kind was up, and land sold practically for the agricultural value it had.

Mr. MOLINA:

Q. Now in the answer to the complaint, Mr. Valdes says as follows: The defendant also admits that the complainant aided and assisted the defendant in and about the prosecution of the said application for a temporary license.

A. In Washington, yes.

Q. But denies that the complainant remained for some time in Washington applying himself exclusively in assisting the defendant in securing the said revocable license, the fact being that the said complainant was in Washington engaged in political business. What have you got to say about that?

A. I have to say that it is not so. I went there at the request of Mr. Valdes. I held no official position; I had no commission to fill; I had nothing, nothing, in any way to make me bother about
60 political situations at all. I only went there to help Mr. Valdes, and so much so, that after I got the franchise from the Secretary of War I went to New York and I was ready to take the boat when I received a telegram from Mr. Valdes,—I have some evidence from people who were with me—and I had to go back to Washington to help Mr. Valdes in some information that they asked.

Mr. MOLINA: I have finished with this witness.

Cross-examination by Mr. TRAVIESO:

Q. Now, Mr. Larrinaga, you said in answer to your counsel's question that you had made application for two different franchises.

A. Yes.

Q. One first to the Secretary of War and then one to the Executive Council of Porto Rico.

A. Now let me tell the attorney that I don't remember whether they were signed by me or Mr. Valdes. We made them. Let it be understood that way.

Q. Then to which one of those applications did you contract as contained in that letter referred to?

A. To everything in connection and about no franchise in particular; to everything, every assistance that he would require through the process of obtaining that franchise.

Q. So all the work done by you in connection with the obtaining of this franchise was done by virtue of your original contract with Mr. Valdes?

A. Yes, sir.

Q. Everything refers back to the original contract?
61 A. To the original letter of contract.
Q. Now before you received that letter of October 30, 1898, did you have any conversation with Mr. Valdes in regard to this application for a franchise?
A. I refused to have anything to do with the matter, as I was connected officially in some way with the government.
Q. Is it not a fact that prior to the letter of October 30th, you made a verbal agreement with Mr. Valdes?
A. Not a word.

The COURT: That will be stricken anyhow. Any negotiations or verbal agreements are merged in a written agreement.
Mr. TRAVIESO: If Your Honor allows me to explain why I ask this question.
The COURT: Yes.
Mr. TRAVIESO: One of the allegations of the complaint is that the complainant further alleges that at about said time, that is, October, 1898, the said complainant entered into a verbal agreement or compact. So that, paragraph III says: "About said time the said complainant and defendant entered into a verbal agreement or compact, wherein and whereby it was agreed that said complainant should assist said defendant in securing said franchise."
The COURT: All right; go ahead and ask your question.
Mr. TRAVIESO: I want to read this paragraph to show the pertinence of my questions. "And particularly that the said com-
62 plainant should perform the duties in connection with the technical part of said work in the preparation of plans, projects, descriptions and other technical matters; and it was agreed that the said complainant should receive in compensation for his assistance and services in the premises a sum equal to ten per cent (10%) of the net value of all profit or benefit which might be derived from the said franchise, in case the same should be granted. That the said verbal agreement so entered into between the plaintiff and defendant was confirmed by the said defendant on the 30th day of October, 1898, by a letter written by the said defendant to the said complainant, in which the identical proposition to give to the said complainant ten per cent (10%) of the benefit to be derived from the said franchise was restated; that the said complainant, in writing, accepted the said proposition so made by the said defendant and under the terms and conditions of the said agreement so made the said complainant occupied himself in connection with the preparation of the said plans, specifications and detailed technical work in connection with the said application, giving his aid and assistance in every way and manner to the said defendant in supporting the application of the said defendant for the granting of the said con-
cession or franchise. That during said time one Arpin and
63 one Noble, who were likewise interested in certain lands in the vicinity of said waterfalls, were also seeking to secure a concession similar to that which was being asked for by the said defendant, and that the said complainant also aided and assisted the said defendant in connection with the opposition he was making

to the application of the said Arpin and Noble for a franchise similar to that which was being asked for by the said defendant."

Mr. PAINE: I am going to object to this line of questioning on the ground that it is immaterial for this reason, that the line of questioning is intended to bring out the defense that this contract was a contract made, either verbally or by one letter, when Mr. Larrinaga occupied an official position, and for that reason was absolutely void and unenforcible, and without saying anything about that defense or whether it lies in the mo-th of this defendant to make it, I raise that objection, and I want to call your attention to the fact that the work thereafter done was at the request of Mr. Valdes and that it was ratified and confirmed after Mr. Larrinaga left that position.

The COURT: You may ask him this question, whether he entered into any verbal contract while he occupied an official position.

Mr. TRAVIESO: I want to establish the fact whether there was a verbal agreement.

64 The COURT: Go ahead.

Q. Now, Mr. Larrinaga, is it not a fact that before you received the letter of October 30th, you had a verbal agreement or compact with Mr. Valdes, by which you were to receive ten per cent, and that that verbal agreement was made prior to the month of October?

A. No, sir; and it is proved by the same letter of Mr. Valdes.

Q. I asked you to say whether or not.

The COURT: He said, no.

A. No, it is proved by his letter.

The COURT:

Q. When, with relation to October 30, 1898, did you resign your position as Under-Secretary of the Interior?

A. I guess I had already resigned a month before that, more or less, as far as my recollection will carry me.

Mr. TRAVIESO:

Q. When you made that agreement, or when you received that letter, had Mr. Valdes made application for the franchise already?

A. Before the Spanish government, yes, I believe so.

Q. Did you have anything to do with the publication of the notice to the public that an application had been made for that franchise?

A. I don't think they had taken place at all; that his application had been made before the Spanish government and nothing else had been done; that is my recollection of the thing.

Q. Did you have anything to do personally with that application?

Mr. PAINE: I want to object, because it is absolutely immaterial if in the course of his official duties he had something to do with a franchise requested by Mr. Valdes.

65 The COURT: The objection is sustained as being immaterial, the testimony showing that at the time of entering into any contract with the defendant, the complainant had no official connection with any government which had authority to grant any franchise in the Island of Porto Rico.

Mr. TRAVIESO: Please note an exception.

Q. Mr. Larrinaga, do you remember on what date you were appointed Under-Commissioner of the Interior?

A. I forget exactly the date, but it must have been some time in the month of February, 1898, because I was in Mayaguez in some works in my profession and I was called by my political friends here. That must have been,—there happened to be a gentleman here in court who could remember the date, but it must have been some time in the month of February, 1898.

The COURT: That was during the time when Porto Rico was supposed to be autonomous; when it had turkey on the table, but it was all papier-maché.

Q. You were in that office, you said before, until the latter part of September.

A. About those dates, I would not commit myself, but it must have *have* been about that date, September.

Mr. TRAVIESO: Now to lay a foundation for the impeachment of the witness.

Q. Now, Mr. Larrinaga, your complaint was verified by you, was it not? It was sworn to by you, your bill of compl*ian*t?

A. I believe so.

The COURT: Have him identify his signature.

66 Q. (Handing the original bill of complaint in the case to the witness.) Is that your signature?

A. Yes, sir.

Q. That was sworn to by you before John L. Gay, Clerk of the court personally.

A. Yes.

Q. Do you remember, Mr. Larrinaga, having made the statement in this bill of complaint. I wish to have the witness read to himself paragraphs two and three of the complaint and say whether he made those statements in this bill of complaint. (The bill of compl*ian*t is handed to the witness.)

A. (The witness reads the paragraphs in question to himself and hands the paper back to counsel.) What is the question?

Q. The question is whether those statements were made by you.

A. Yes, sir; because they are the facts agreed and he wrote me then the letter.

Q. So the fact is that there was a verbal agreement?

A. A day before or a few hours, and I wanted it written, and he wrote me that letter to that effect. I wanted something written.

Mr. TRAVIESO: That is all.

Redirect examination by Mr. PAINE:

Q. Mr. Larrinaga, was the work done by you all this time covered by the letters in evidence, done at the request and with the knowledge of Mr. Valdes?

A. Oh, yes, everything. If the gentleman looks over a pile of correspondence, he will see that day and night we were working.

Q. Was there any agreement between you and Mr. Valdes, either in writing or verbal, wherein you agreed to do anything
67 that was incompatible with your official duties?

A. Not at all.

Mr. PAINE: That is all.

Witness retires.

The hearing is adjourned until Monday, June 10, 1912.

JUNE 10, 1912.

Counsel for the complainant move that the exhibits heretofore introduced by them without reference to their chronological order may be re-lettered so that they will be in order of sequence as to date, which is granted and ordered to be done.

TULIO LARRINAGA, being recalled as a witness in his own behalf, testified as follows:

Direct examination by Mr. PAINE:

Q. Mr. Larrinaga, what period of time was covered by your work in connection with the franchise which is in issue in this case?

A. As far as I can recollect, it was from the 9th day of December, 1898, when Mr. Valdes wrote me a letter instructing me to meet his attorney Mr. Rossy and learn all the necessary particulars about that contest of Arpin and Noble about the land.

Q. Up to what time?

A. Up to the time when I was in Washington, when on account of the Vandergrift contest, Mr. Valdes asked of me to approach the government there and see that the decision here against
68 Vandergrifts, doing away with his claim, was ratified by the government.

Q. What year was that?

A. That was in 1905.

Q. Now during that period did you devote any considerable portion of your time each year to this work?

A. A good deal of it; I had to be for months and months on the ground and in the notary's office here, interviewing the property owners on account of the Arpin and Noble contest for the possession of the riparian lands, which were very aggressive people, and every day they were bringing in new testimony and I had to be fighting them continually.

Q. In what year was that, do you remember?

A. That was from the very day, the 9th of November, all through the following year, 1900, until 1901, I believe it was in the

month of July, 1901, that the decision of the court did away with Mr. Noble and Arpin's franchise, which I communicated to Mr. Valdes.

Q. From that time on until 1905, in a brief, course way, what did you do?

A. I was not only doing, as I told you before, going to see the land owners, see what kind of rights the other fellows had got, what they had given to Mr. Valdes, because some of the country people had broken the contract and there was a regular mess, and I was studying those documents with Mr. Rossy, and at the same time I was doing some technical work there for Mr. Valdes.

Q. Did you do any work in support of the franchise before the government?

A. I did, sir; I did, sir. I had to appear——

69 Mr. PAINE: Mr. Larrinaga, in his own desire to make his case as strong as possible, said that we had not brought out sufficiently the amount of work done by him, but as a matter of record I would like to call Your Honor's attention to the mass of plans and letters which would be material but cumulative.

The COURT: If you consider it material, it will be received, because up to the present time there has not been very much definiteness as to the amount of work, or even the character of it, except in a skeleton way.

Q. Now, Mr. Larrinaga, please continue and state as concisely as possible the work done by you for the defendant Mr. Valdes in connection with this franchise.

A. As I told you, I took hold of the whole business and went there making surveys and franchises. When Mr. Valdes left two or three months after that for Washington, it was in April, the next year, 1900, Mr. Valdes left an official letter with the Secretary of the Interior, telling him that I was his advising engineer, that I was in charge of the service and everything connected with the franchise. In consequence of that, the Secretary of the Interior addressed himself directly to me, advising me that on the 20th day, I believe it was, of March, the government engineer would be on the ground to verify the accuracy of my work. We went there with engineer Pedro Fernandez.

The COURT: When was this?

Mr. PAINE: What year was this?

70 A. That must have been 1900; in the spring of 1900 we went there and were the whole day working there with the instruments, etc., and Mr. Pedro Fernandez reported to the Department of the Interior on the subject.

The COURT:

Q. Who was he?
A. Mr. Pedro Fernandez.
Q. Representing the Department of the Interior?
A. Of the Interior, the government.
Q. And that was what year?

A. 1900, and then we went; Mr. Valdes was, as I said, from the month of April he was in Washington between April, May and June; in the month of June he cabled me to go there and help him, as he could make no headway with the Department of War in order to obtain the revocable license. I cabled him back that I could not go just at that moment because the opposition, the other gentlemen, Arpin and Noble had renewed their opposition and I had to look to that. After I disposed of that work, I started for Washington, and I got to Washington, I believe, in the latter part of July.

Q. Of what year?

A. 1900, Your Honor: I met there Mr. Valdes with several other Porto Ricans at the Hotel Colonial and I went there and helped Mr. Valdes, and in three or four days I succeeded in presenting the case to the Department of War in such a way that Secretary Root, who was Secretary of War at the time, agreed to grant it and asked me to tell Mr. Valdes to come the next day with me and take up the matter of perfecting the franchise with the Assistant Secretary Michaeljohn, which we did; everything having been satis-
71 factorily arranged, Mr. Valdes treated me and the rest of the Porto Ricans to a dinner at the Hotel Royal. There was a very comic incident at that dinner which I don't thing is important.

Mr. PAINE: Tell it.

A. When the waiter brought the check, I had to pay it. I left for New York, and I was ready to take the Kilpatrick with other Porto Ricans for whom and for myself I had obtained a free pass on the United States Transport Kilpatrick. Two days before I got a telegram from Mr. Valdes that there was a little hitch, and some other Porto Ricans accompanied me back to Washington, and I disposed of the difficulty. It was the lack of Mr. Valdes' knowledge in technical matters, so I left everything arranged and came back. Mr. Valdes, I believe, remained there to form that River Plata Company. Is that all you wish?

Q. No, I should continue right down to 1905.

A. Mr. Valdes failed to proceed to work. He wrote me of the necessity of going on.

Q. (Handing a paper to the witness.) Let me interrupt, Mr. Larrinaga, and ask you if this was a note made by you in connection with this?

The COURT: In connection with what?

Q. In connection with the work done by you for Mr. Valdes.

A. Yes, sir; it looks like it.

Q. Do you remember when you made that note?

A. I remember that I handed this to my attorneys Hartzell & Rodriguez Serra.

Q. How long ago was that?

A. That was some years ago after I came from Washington.

Q. About what year, do you remember?

72 A. That must have been about 1907.

Q. At the time that you made that memorandum did you have these matters well in mind?

A. Oh, yes, yes, very clearly, yes.

Q. Now using that to refresh your memory, continue to describe what you did.

A. Yes, I presented this to Hartzell & Rodriguez Serra as the whole history of it.

Q. Starting where you left off.

A. I just left at the time with Mr. Valdes failing to proceed with the work, the franchise. He urged me to ask for an extension of the franchise, or something of the kind, but somehow or other the franchise lapsed, and then in 1900, I believe, I obtained a new franchise. I started to get a new franchise because the civil government had already been established and everything else had to be obtained from the Executive Council. I proceeded to do that and we obtained a franchise from the Executive Council.

The COURT:

Q. In what year?

A. I believe it was in 1901, or December of 1900; December of 1900 or the first part of 1901, and we proceeded. He formed then the River Plata Company there and he enjoined me to begin in accordance with the terms of the franchise to do actual work, building, which was not in my contract, but in order to please everybody willing to come in, I took charge of the works and I began doing the diggings. After some time I received a letter from Mr. Valdes telling me that I should make a very exhaustive report to the
73 Executive Council proving that the works were going on and that therefore he was complying with the franchise. We presented that and it was satisfactory, but the River Plata Company failing to furnish funds enough to prosecute the work, in 1902, I believe, the new franchise lapsed. I want to remind the attorney that the first application during the military government was signed by me and Mr. Valdes, as, at the time, he in good faith admitted that we had a partnership there. That first franchise was signed by himself and myself.

Mr. PAINE:

Q. Now go ahead with the actual work done.

A. The actual work done was this, that the second franchise lapsed,—that a certain Mr. Yeager and Mr. Vandergrift—but Mr. Valdes remonstrated and claimed that the franchise should not be revoked because the work had been pushed and the money had not been forthcoming because of the litigation.

Q. With whom did he remonstrate?

A. With the Executive Council.

Q. Did you assist him in that?

A. In every step of that I did assist him. That bunch of correspondence will show.

Q. Continue.

A. Then Yeager and the Vandergrift Company came in, including the Valdes franchise in a mammoth scheme they had made up,

in which different waterfalls, including the Comerio, figured, to build a railroad from here to Ponce through the interior.

The COURT:

Q. You mean to say that Mr. Valdes was connected with the Vandergrift enterprise?

A. No, Mr. Valdes said that since the Vandergrift franchise had lapsed, a new franchise should be given to him.

74 Q. Did you oppose the Vandergrift franchise?

A. I did; I believe that I was instrumental in having the Vandergrift franchise knocked out. We had a meeting at the Executive Council, the whole of the Executive Council, and attorneys, I believe Mott, Dexter and Sweet and some others; we all appeared there, some in behalf of Mr. Vandergrift, and I in behalf of Mr. Valdes, and I believe Mr. Dexter was attorney for Mr. Valdes, and my statement showed that the Vandergrift Company should not be granted the franchise because it was an absurdity, that it was a wild cat scheme, that you could not think of building a line from here to Ponce, an electric line. Shall I go on with this detail?

Q. Not so much in detail.

A. My presentation of the Vandergrift scheme being absurd was instrumental in the Executive Council doing away with that Vandergrift franchise.

Q. What year was that Mr. Larrinaga? You can refresh your memory from that paper.

A. The whole thing ran through such a long period, but that was one of the last steps, and it must have been some time in the year (referring to notes); yes, sir; there is a letter there from Mr. Valdes addressed to me in Washington, that must have been after 1902, sure. Vandergrift franchise I guess was the last opposition.

Q. Never mind fixing the date.

A. I could not fix the date.

Q. Did you do any work in Washington in connection with the Vandergrift franchise?

A. Yes, sir; I was already resident commissioner in Wash-
75 ington when Mr. Valdes wrote to me to see that the revocation of the franchise of Vandergrift was approved by the government there, and I had to go to the officials there to see to that.

Q. What year was that, if you remember?

A. In 1905, I believe.

Q. Were those services performed in Washington part of your official duties as Resident Commissioner from Porto Rico or were they not?

A. I didn't care which it was. I knew that the Executive Council had done that and it was only a matter of asking the government there to confirm it. Of course I had some interest in that to be knocked out. Mr. Valdes naturally addressed himself to me as the only person there knowing about it.

Q. Now during the period covered by your testimony, did you

make plans and have correspondence with Valdes, that is, draw maps and plans and have correspondence with Mr. Valdes?

A. Yes, I had to present some to the Executive Council every time that some explanation had to be made.

Q. I show you a filing folder containing a large number of letters and plans and ask you if all that work pertains to work done by you at the request of Mr. Valdes.

A. Yes, sir.

Mr. PAINE: I desire to offer it, not in detail, a folder containing plans and correspondence, simply for the purpose of showing that plans were made and correspondence had. Some of it may not be admissible. I am not going to offer it for the contents of the letters.

The COURT: You are going to offer it as a cubical content,
76 are you? That is a new idea to me.

Mr. PAINE: Here is my idea of it. The issue was the amount of work done.

The COURT: How would that show the amount of work done? I might as well take a block of wood here and say this was done in connection with it. I can't see that it is any identification. If you want to offer each one of these separately.

Mr. PAINE: No, I don't want to encumber the record.

Mr. TRAVIESO: This is an action, not to recover compensation for services, but a percentage.

Mr. PAINE: If Mr. Travieso takes that position, this becomes unnecessary.

The COURT: I don't believe I can admit them in that form.

Mr. PAINE: The purpose has been accomplished. I wanted to get it before Your Honor to show the actual amount of work done.

The COURT: My idea of the case is that it is a contract, and Mr. Larrinaga has already stated that he complied with all the terms of the contract. I think that is enough. If you need any of it in rebuttal, you may offer it. Don't consider that as offered. It is not offered, is it?

Mr. PAINE: No.

Mr. TRAVIESO: No cross examination.

Witness retires.

Mr. PAINE: The plaintiff rests.

77 Mr. TRAVIESO: The defendant moves to dismiss the bill upon the following grounds:

1. That the allegations of the bill have not been sustained by the evidence, in that the evidence does not show that there was an actual sale by the defendant Ramon Valdes to the Porto Rico Power & Light Company of any franchise or concession granted by the Executive Council of Porto Rico.

2. That there is no evidence as to the amount, if any, received by the defendant Valdes from the Porto Rico Power & Light Company as a consideration for the alleged transfer of a franchise, so as to enable the Court to render its judgment, nor is there any evidence

as to the value of the franchise said to have been transferred by the defendant.

3. That neither the allegations of the bill nor the evidence introduced by the complainant has made out a case entitling the complainant to the relief prayed for in this case, as a court of equity, and that the complainant could have obtained the relief, if he is entitled to any, in a court of law, where he would have a full, complete and adequate remedy.

4. That the contract upon which the suit is brought, is, from the showing of the bill and the evidence of the complainant, illegal and against public policy, and, as such, null and void, because it
78 provides for a contingent compensation for acting as an agent in securing a franchise from the government, the contingency being the success of the agent in securing the franchise.

As to this last ground, I would like to present authority to Your Honor.

The COURT: I should like to hear them.

Mr. TRAVIESO: I wish to cite the case of Guerra v. Conde, 4 P. R. Fed. 54; 103 U. S. 61; 2 Wall. 45.

After further argument, the matter is taken under advisement by the Court and the hearing is adjourned until 9 a. m., June 11, 1912.

JUNE 11, 1912.

The COURT: The defendant, before the American occupation of the Island of Porto Rico, made application through proper officials of its government for a concessionary grant or franchise for the use of the waters known as "The Comerio Falls," for the purpose of applying the same to the generation of power. Not being technically expert in engineering, he proposed to the complainant, an engineer of tried skill and long experience, an association in interest in said project, which is contained in a letter from the defendant to the complainant, dated October 30, 1898, in which he states, among
79 other things, the following: "I propose to interest you in the profits of said concession in the amount of 10%, provided that you accept the obligations hereinbefore mentioned," the same being the enlistment and furnishing by the complainant of any aid that he could give in obtaining the concession, and in furnishing from his technical knowledge and experience, plans and projects for the creation and application of the power. This proposition was accepted by the complainant in a letter directed to the defendant, and dated the 31st of October, 1898, in which, after accepting the conditions as to aid personally and professionally, he specifically accepted a participation of ten per cent in said concession in exchange for said services. Thereafter, and in pursuance of the agreement contained in the two letters referred to, together with the defendant, the complainant signed, as a party applicant, a request for a concession for the use of the waters of Comerio Falls for the purposes hereinbefore stated. The government of the Island of Porto Rico at that time was military in character. It subsequently became a composite of military and civil government, and finally, upon the passage of

the Organic Act of Porto Rico, and upon May 1, 1900, the government became purely civil, and its organization was practically that which exists at this date. Without recounting the vicissitudes of this concession, or the various franchises for the use of the
80 waters of Comerio Falls, which were granted to the defendant here, and to others, and which either lapsed by non-performance or were cancelled for other reasons, it suffices to say that the evidence adduced shows that the complainant did perform, with thoroughness and efficiency all the obligations which were assumed by the contract contained in the letters hereinbefore recited; that such service was personal as an interested party, and professional in the capacity of complainant as a civil engineer, and comprised as well the preparation of technical plans, work upon the ground, argument and explanation before officials of the insular and of the federal governments, in whose charge, or under whose jurisdiction, the waters of Comerio Falls were, or within whose authority rested the power of granting or modifying the franchises sought. The final result was the granting to the defendant of a franchise for the use of the waters of the Comerio Falls for the purpose of producing power therefrom, and the distribution and sale of said power. Without the knowledge of the complainant, the defendant, with the acquiescence of the Franchise Committee of the Executive Council of Porto Rico, assigned his rights under said franchise, by a contract dated January 14, 1905, to a corporation known as the Porto Rico Power & Light Company, and, so far as the evidence shows, received as compensation therefor, the sum of $28,000.00 in the bonds of said company
81 and the sum of $103,000.00 in the stock of said company. It having subsequently come to the knowledge of complainant that such an assignment had been made, the complainant demanded of the defendant the proportion of the consideration which had been paid him for said assignment, in accordance with the contract existing, and not terminated, between the complainant and the defendant, and the defendant having declined and failed to pay or turn over to the complainant, ten per cent of the consideration received for an assignment and transfer of said concession, complainant brought his suit in this court for an accounting and for judgment.

At the conclusion of the testimony introduced on behalf of the complainant, the defendant moved to dismiss the bill on the following grounds:

1. That the allegations of the bill have not been sustained by the evidence, in that the evidence does not show that there was an actual sale by the defendant Ramon Valdes to the Porto Rico Power & Light Company of any franchise or concession granted by the Executive Council of Porto Rico.

2. That there is no evidence as to the amount, if any, received by the defendant Valdes from the Porto Rico Power & Light Company as a consideration for the alleged transfer of a franchise, so as to enable the Court to render its judgment, nor is there
82 any evidence as to the value of the franchise said to have been transferred by the defendant.

3. That neither the allegations of the bill nor the evidence intro-

duced by the complainant has made out a case entitling the complainant to the relief prayed for in this case, as a court of equity, and that the complainant could have obtained the relief, if he is entitled to any, in a court of law, where he would have a full, complete and adequate remedy.

4. That the contract upon which this suit is brought, is, from the showing of the bill and the evidence of the complainant, illegal and against public policy, and, as such, null and void, because it provides for a contingent compensation for acting as an agent in securing a franchise from the government, the contingency being the success of the agent in securing the franchise.

The ground for dismissal most strenuously insisted upon was that stated as ground No. 4, to the effect that the contract existing between the complainant and the defendant should not be made operative on the ground that it was illegal and against public policy and good morals, and various cases were cited by counsel for the defendant in support of this contention, among them being the case of Guerra v. Conde, 4 P. R. Fed. 54, in which case, under a written contract, the plaintiff sued the defendant to recover under said con-
tract for certain services rendered to the defendant in and
83 about procuring and obtaining for the latter certain franchises from the federal government and from the government of Porto Rico, authorizing the defendant to build and operate a wharf and pier in the harbor of San Juan, Porto Rico. From the evidence in that case, it appears that a large portion of the service rendered was in connection with hearings before committees of the Congress of the United States, and services renderd in endeavoring to secure an Act of the Congress of the United States for the purpose desired by the defendant. And this Court held in relation thereto that, for the reason that a part of the services were for lobbying before Congress and the Executive Council of Porto Rico, to secure the passage of a franchise, in that case, the contract was illegal and against good morals, and directed the jury to find for the defendant.

Another case cited by counsel for defendant, in support of his contention, is that of Tool Company v. Norris, 69 U. S. pp. 45, 54. This was an action by the defendant in error to recover from the plaintiff in error compensation for services rendered in obtaining a contract to furnish certain materials and supplies to the government of the United States, and the Court there held that an agreement for compensation for procuring a contract from the Government to fur-
nish its supplies is against public policy, and cannot be en-
84 forced by the courts. The agreement in that case was entirely contingent and dependent upon the obtaining by the plaintiff in error from the Government of the United States, a contract for furnishing supplies through the offices and service of Norris, the defendant in error.

Another case cited is that of Oscanyan v. Arms Company, 103 U. S. pp. 261, 275. In this case, Oscanyan was the Consul General of Turkey in the United States, and, his Government being in the market for the purchase of arms, and having sent a representative

from Turkey to the United States for the purpose of examining various offerings of manufacturers of arms, the plaintiff Oscanyan entered into a tentative agreement with the defendant in error, The Winchester Arms Company, for a certain payment to him of a price to be thereafter fixed upon a percentage of payment by the Turkish Government for arms purchased by it from The Winchester Arms Company. In this case, the plaintiff in error, by reason of his official position and knowledge of the English language, and of the business customs and responsibility of persons within the United States, was able to use, and did use controlling influence, upon Rustem Bey, the representative of the Government of Turkey, who was sent by it to the United States for the purpose of purchasing arms, and it was the preferential official position of the Con-
85 sul General of Turkey in the United States, which, the evidence showed, was controlling upon the action of the technical Army representative of Turkey in the purchase of the arms, for a percentage of the price of which that action was brought. The Supreme Court of the United States, in reviewing the decided cases, makes clear the distinction which runs through all the cases, that what the law abhors, and for which it will permit no recovery, is an attempt to influence by unfair means, through official position or otherwise, legislative action, or, by means other than argument, to influence the action and operation of executive departments of the Government of the United States, and draws the clear distinction between the reprobation which should attach to such a course of action, and proper argument or representation, either to a legislative body or to an executive official of the Government in obtaining either legislation or a franchise which is not in itself improper, and which is not solicited by any but proper means. The distinction is further drawn by the Supreme Court of the United States so lately as in the case of Nutt v. Knut, 200 U. S. pp. 12, 21, where, in an opinion by Mr. Justice Harlan, the Court, after a statement of fact to the effect that the predecessor of the claimant, the defendant in error, having agreed in writing to prosecute a claim against
86 the Government of the United States for the use of property, and for property taken by the Government of the United States in military operations, concluded that such a contract was not in itself immoral and could be enforced as not being against public policy, and drew there the distinction which was drawn in the case of Oscanyan v. Arms Company, supra, between different classes of services rendered in relation to claims against the Government, or legislation affecting it, or franchises to be granted by it.

From an examination of all the cases, I am of opinion that the contract entered into between the complainant and the defendant here, being a participation as a partner in profits, not only permitted, but enjoined upon and obligated the complainant to use all rightful means for the furtherance of the common object, and the testimony having shown that he did in good faith and with effectiveness use all such means, the motion to dismiss will be denied, and an exception. Do you wish to proceed?

Mr. TRAVIESO: Yes, sir.

87 *Testimony for the Defense.*

FRANCISCO GUTIERREZ, being called as a witness in behalf of the defendant, was duly sworn and testified as follows:

Direct examination by Mr. TRAVIESO.—Interpreted.

Q. What is your name?
A. Francisco Gutierrez.
Q. What is your occupation?
A. Record keeper and librarian of the Department of the Interior.
Q. Have you got under your custody the expediente No. 3108?
A. Yes, sir.
Q. Will you state to what matter that expediente refers?
A. An application of Don Ramon Valdes asking for a water concession from the River Plata.
Q. Will you see where the application is?
A. (Witness examines the document.) The original petition does not appear here.
Q. This first communication appearing in this expediente, state to the Court what it is so that it may be identified.
A. The Deputy Secretary of Public Works and Communications by order of the Secretary forwards the petition of Don Ramon Valdes asking for that concession so that the Chief Engineer of Public Works should report upon the matter or the petition.

Mr. TRAVIESO: The signature of Mr. Larrinaga on this paper is admitted by the complainant. That is in Spanish and I will offer a translation.

The COURT: It has not been made?

Mr. TRAVIESO: It has not been made but I will have it made.

Mr. PAINE: We make no objection to the signature of Mr.
88 Larrinaga, but we do object to it because it is anterior to the contract and is therefore immaterial.

The COURT: I won't receive it at all unless it is translated.

Mr. PAINE: Note an exception.

Mr. TRAVIESO: It is so short that the Interpreter may read it.

The Interpreter then translated the document in question into English.

The COURT: What is the purpose of this?

Mr. TRAVIESO: The purpose of this letter is to show that Mr. Larrinaga as public officer in the Department of the Interior forwards the application of Mr. Valdes.

The COURT: To whom?

Mr. TRAVIESO: To the Chief of the Bureau.

Mr. PAINE: We don't deny that.

The COURT: What of that?

Mr. TRAVIESO: Now the point is this, the complaint alleges,—and I will offer the bill of complaint in evidence for that purpose, as being before the Court and not amended as it is, the bill of complaint alleges that prior to the month of October, 1898, the com-

plainant made a verbal agreement or compact with the defendant, Mr. Valdes, for the getting of this franchise. Now this shows that in the month of October, October 4th, Mr. Larrinaga was holding that position and is taking steps as an official of the Govern-
89 ment to forward this application, following the necessary rules of the Department in which he was an officer.

The COURT: Well, the verbal proof of Mr. Larrinaga shows that the letters of October 30th and 31st, 1898, were a crystallization of a conversation which he says took place the day before. That was his testimony.

Mr. TRAVIESO: I am offering this to rebut his testimony.

The COURT: This doesn't rebut it because this only shows that he as an official forwarded this application, which I presume was in the line of his duty.

Mr. PAINE: It is admitted that previous to this contract, Mr. Larrinaga was in this position, and the letter of Mr. Valdes says: "I have applied for a water franchise from the River Plata, place called "Salto," for the purpose of developing electric power to be applied to several industries, as you know, from my application which went through you while you were Assistant Secretary of "Fomento."

Mr. TRAVIESO: I take it that Mr. Larrinaga is bound by his statement in his complaint. It is under oath.

Mr. PAINE: Not as to this, Your Honor.

The COURT: I don't think it is as to this.

Mr. TRAVIESO: I claim as an affirmative defense that on that day he could not make such a contract.

The COURT: I don't think this is material.

Mr. TRAVIESO: Will Your Honor permit me to make the record?

The COURT: Yes, make it in full.

90 Mr. TRAVIESO: The defendant offers in evidence an official communication addressed by the complainant, Mr. Tulio Larrinaga, as Under-Secretary of the Interior of Porto Rico, by which communication he forwards to the head of the department the application of Mr. Ramon Valdes, the defendant, for the utilization of the waters of the Comerio Falls, which communication is dated October 4, 1898. The defendant also offers in evidence the bill of complaint in this case for the purpose of showing, as alleged in said bill, that the verbal agreement or compact made between the plaintiff and the defendant was made prior to the month of October, 1898. That is what the bill says.

The COURT: The bill says prior to the month of October?

Mr. TRAVIESO: Yes, it does say so.

Mr. PAINE: Shall I state my objection, Your Honor?

The COURT: No, I will rule on it. The offer of the defendant of the application for the use of the water of the Rio Plata and the letter of transmittal sent by the complainant as Under-Secretary of the Interior is excluded for the reason that the contract between the parties hereto was dated October 30-31, 1898, a date subsequent to the date of said communication, and the testimony of the complainant was that the verbal agreement, which was crystallized into

said writings, was made on the day before the date thereof,
91 to wit, on October 29, 1898, and that prior to that time he had resigned his official position under the Government of Porto Rico. And the offer of the allegation in the bill of complaint to the effect that the agreement had been made prior to October, 1898, is rejected as being immaterial and subject to be stricken as not conforming to the proof, and an exception.

Mr. TRAVIESO: Now, to continue my record, I offer the statements in the bill of complaint for the purpose of impeaching the testimony of the complainant as a witness in his own case, as a statement in opposition to his testimony made here. I just want to have that in the record.

The COURT: Denied for the reasons before given, and an exception.

Q. Have you with you the expediente No. 18?
A. Yes, that is a personal expediente.
Q. To whom does it refer?
A. To the Deputy Secretary of the Department of Public Works, Mr. Tulio Larrinaga.
Q. Can you state from looking at that expediente, what date it appears that Mr. Tulio Larrinaga was appointed Sub-Secretary of the Department of the Interior?

Mr. PAINE: I object to the question on the ground that it is immaterial inasmuch as the fact that Mr. Larrinaga was acting as Sub-Secretary is admitted, and it is immaterial.
92 The COURT: Absolutely; sustained.
Mr. TRAVIESO: Note an exception.
The COURT: Now are you going to offer any evidence as to his resignation?
Mr. TRAVIESO: Yes.
The COURT: That would be material.
Mr. PAINE: We want that in.

Q. On what date did his resignation take place?
A. It appears here under date of September 30, 1898, but there is a rough copy here dated October 6, 1898, wherein it is said to the Secretary of the Treasury Department that on that date Mr. Larrinaga had ceased in his employment.
Q. So that, according to your records, Mr. Larrinaga ceased on the 6th of October, 1898?
A. According to the communication of the Governor, it was the 30th of September, but according to this other communication it appears that he did not leave up to the 6th, and it was communicated to the Treasury Department for the purpose of paying his salary.
Mr. TRAVIESO: That is all.
Mr. PAINE: No cross examination.
Witness retires.

The COURT: Is that your case?
Mr. TRAVIESO: No, I have more evidence if Your Honor please.

I offer in evidence an extract from the minutes of the proceedings of the Executive Council of Porto Rico on July 21, 1902.

The COURT: It is certified?

93 Mr. TRAVIESO: It is certified and it is in English. It is for the purpose of showing that the franchise granted by the Executive Council to Mr. Valdes alone was declared forfeited by the Executive Council on that date in 1902.

Mr. PAINE: It is admitted.

The COURT: You are just encumbering the record if you put in all these things that did take place. The thing that is material is the continuity of the application and of the service and the securing of the final franchise that was disposed of.

Mr. TRAVIESO: What I want to show is that this franchise, which was the only one obtained by Mr. Valdes, was cancelled. Now if something canceled and not existing can be sold, my argument falls, and I want the full minutes of the Council to appear in the record.

The COURT: Very well; let it go in in that way.

The document in question was then placed in evidence and marked: Exhibit A for the defendant.

Mr. TRAVIESO: I offer a certified copy by the Secretary of Porto Rico of a franchise granted to the Porto Rico Power & Light Company for the purpose of showing that this franchise was granted direct to the Porto Rico Power & Light Company, and there is no mention made either of Mr. Valdes or of any previous grant or concession.

Mr. PAINE: It is a pretty strong recognition that there was something doing. No objection, Your Honor.

94 The COURT: Let it go in.

The document in question was then placed in evidence and marked: Exhibit B for the defendant.

Mr. TRAVIESO: I offer in evidence a deed dated June 1, 1905, a deed of sale by Mr. Valdes to the Company, where he sells properties on the bank of the Comerio Falls, this being the deed to which the complainant refers. That is for the purpose of showing that what Mr. Valdes sold to that company were certain properties existing on the banks of the Rio Plata, and for which he got the price specified in this other contract, and showing that the obtaining of the franchise by the Company was merely a condition precedent to the payment of the price, and for the purpose of showing that no transfer of any franchise granted by the Executive Council was made by Mr. Valdes to the Company. The deed was executed before myself in New York as a Notary Public.

The COURT: What is the consideration?

Mr. PAINE: The same.

The COURT: $131,000.00?

Mr. PAINE: Yes. No objection, I am glad to have it in. It shows the game exactly.

The COURT: Let me see it.

The deed in question is handed to the Court.

The COURT: Let it be admitted.

The deed in question was then placed in evidence and marked: Exhibit C for the defendant.

95 The COURT: That was in June, 1905, wasn't it?

Mr. TRAVIESO: June 1, 1905, three years after the cancellation of the franchise.

We offer a letter in evidence, subject to filing a written translation.

The COURT: Is there objection?

Mr. PAINE: I prefer to have the Interpreter read it.

Mr. TRAVIESO: I might state the purpose of offering this letter; it is to show the nature of the services that were performed by Mr. Larrinaga besides the professional services rendered in connection with this franchise.

Mr. PAINE: Then I will object on the authority of the Massachusetts case that I cited in my brief, if the contract itself is a legal contract, if thereafter the plaintiff in his zeal did render other service, that does not invalidate the contract.

The COURT: Let it be read to me and then I will rule on it.

The Interpreter translates the letter into English.

The COURT: What is the objection?

Mr. PAINE: I object to the admission of the document in evidence on the ground that, the contract sued on being by its terms a valid contract and not subject to the objection of being a lobbying contract or a contract against public policy, the mere fact that thereafter this plaintiff, if he has so done, did in his zeal try to bring to bear any personal influence which he might have had to obtain

96 the granting of the franchise, cannot invalidate the contract, legal in itself, on which suit is brought. On the further ground that it does not appear from the letter that any improper influence was brought to bear.

The COURT: The objection is sustained on the ground that the document offered is immaterial for the reasons stated in the objection, and an exception.

Mr. TRAVIESO: If Your Honor please, so as not to have the whole letter, but the purport of the letter——

The COURT: No, you must insert the whole letter because if this is going up I want the people to know what I ruled on.

Mr. TRAVIESO: Then the record might show that the defendant offers in evidence the following letter, and I will get a translation.

The letter in question was then marked: — D for the defendant. not admitted.

Mr. TRAVIESO: Defendant offers a receipt signed by Mr. Larrinaga, acknowledging the receipt of $250.00 in payment for topographical work and plans and work at the Comerio Falls.

The COURT: Is there any defense of payment in the answer?

Mr. TRAVIESO: Yes, one of our defenses is that we paid Mr. Larrinaga for the professional services.

The COURT: He testified in chief that he was paid back by Mr. Valdes $250.00 for certain expenditures which he had made in connection with the work. He said that he had to employ people on the ground.

97 Mr. PAINE: We can rebut that.

The COURT: What is the use of that? He testified in chief as to the amount and what it was for.

Mr. PAINE: I will not object. I would rather have it go in.

The receipt in question was then placed in evidence and marked: Exhibit E for the defendant.

The testimony in the main case is closed.

The COURT: I am going to hold that the contract is not against public policy and is in force, and that the plaintiff is entitled to recover.

The hearing is adjourned until June 13, 1912, for the taking of testimony on the question of the accounting.

98 JUNE 13, 1912.

The COURT: I really sit as an assessor and in that capacity I am not controlled by the same strict rules of evidence as I might be in another class of cases, however, if counsel prefers to make objection, he may do so and then I will arbitrarily assess the damage. You may just choose whichever you think is more advisable, after I have asked Mr. Teale the qualifying questions.

FRED WARREN TEALE, being called as a witness, was duly sworn and testified as follows:

Examination by the COURT:

Q. You may state your name.
A. Fred Warren Teale.
Q. Residence.
A. San Juan.
Q. Occupation.
A. Consulting engineer.
Q. You may state what official connection, if any, you have with the Porto Rico Railway, Light & Power Company as successor of the Porto Rico Light & Power Company.
A. I am President and General Manager.
Q. What official position, if any, do you occupy with relation to the Porto Rico Light & Power Company, now merged as to interest with the Porto Rico Railway, Light & Power Company.
A. I was Managing Director of the Porto Rico Power & Light, the old name.
Q. Is that corporation still in existence?

A. Everything is taken over by the Porto Rico Railway,
99 Light & Power Company.

Q. But it retains its corporate existence.
A. In the North; it has gone out of business here entirely.
Q. Gone out of business but retains its charter.
A. Retains its charter.
Q. And its franchise is being operated as a part of the operation of the Porto Rico Railway, Light & Power Company?
A. Yes, sir.

Q. By acquiescence if not direction of the Executive Council of Porto Rico.

A. Yes, the new company was founded at the request of the Executive Council.

Q. At the direction of the Executive Council.

A. Yes, sir.

Q. Does the Porto Rico Power & Light Company still retain its corporate existence in that it has officers and a board of directors?

A. It has officers in Toronto.

Q. In Toronto?

A. Yes, sir.

Q. Is there any official of that company or director resident in Porto Rico?

A. No, sir; there is not.

Q. None?

A. None whatever, not of the Power & Light Company, you asked me that.

Q. Of the Power & Light Company.

A. No, sir.

100 Q. Where are its books kept?

A. It has no books now; everything was transferred bodily to the Porto Rico Railway, Light & Power Company.

Q. Well, but in order that it may retain its corporate existence, it must have at least an annual meeting and an election of officers.

A. Those are held in Toronto, to the best of my belief.

Q. Was the charter granted by a State of the United States or by Canada?

A. The charter of the Power & Light Company, I can't tell you whether it is Maine or New York, off hand.

Q. But a State of the United States?

A. Yes, sir.

Mr. TRAVIESO: I think it is Maine.

A. Yes, it is Maine.

The COURT: Yes, I know it is Maine because it passed over my desk in Washington.

Q. State, if you know, what has become of the books of said company which would show its capitalization and bonded indebtedness.

A. Of the Porto Rico Power & Light?

Q. Yes.

A. The books are now in Toronto, and its capitalization and securities of all descriptions are held by the Porto Rico Railways Company, which is a Canadian Company with headquarters in Toronto, and is the holding company for the present company.

Q. For the three consolidated local companies?

A. Yes, then there is the Porto Rico Construction Company, and they also have other interests.

Q. Are you an official of the Porto Rico Railways Company?

101 A. Yes, sir; I am general manager.

Q. And as such general manager have you in your possession memoranda which would enable you to testify as to the capitali-

zation and bonded indebtedness of the Porto Rico Power & Light Company?

A. I can get that data. Yes, sir; I think we have it here.

Q. Would you be able to testify from knowledge or from memoranda which are in your possession, as to the amount of the stock and bond issues of the Porto Rico Power & Light Company outstanding upon June 1, 1905, and the market value thereof?

A. I could not; no, sir. The Porto Rico Power & Light Company at that time was owned by the J. G. White Company. It was prior to its purchase from them.

Q. Have you any means of informing yourself so that you would be qualified to testify as to the stock and bond issues of the Porto Rico Power & Light Company outstanding upon June 1, 1905?

A. I have none of that data whatever, Sir.

Q. You did not at that date have any connection with that company

A. None whatever, Sir, nor did the Porto Rico Railways Company. The present interests were not interested in the company at all at that time.

Q. You did, however, take over the franchises and business of the Porto Rico Power & Light Company into the Porto Rico Railways Company.

A. Yes, sir.

Q. And therefore the latter company, in its absorption of the former, took it burdened with the stock and bond issues then outstanding, unless the same have since been reorganized.

A. Yes, sir.

102 The COURT: If you desire to ask him any question, you may proceed. You may be able to do better than I.

Examination by Mr. PAINE:

Q. Mr. Teale, are you familiar with the properties comprising the Comerio Falls water power plant?

A. Yes, sir.

Mr. PAINE: I imagine there is no need of qualifying him as to their value.

The COURT: I should think not.

Mr. TRAVIESO: I am going to object to his testifying, on the ground that this contract does not show that this franchise was sold, so as to fix a price for it, and upon the ground that the contract refers to the sale of other properties specified in the deed of June 1, 1905, therefore any opinion as to the price paid for a franchise which is not shown to be sold by the contract, is entirely immaterial and irrelevant.

The COURT: The objection will be overruled for the reason that no election of a form of transfer by the defendant of properties which rightly and legally might be construed to constitute a portion of the basis upon which the contract was founded, for a breach of which contract the complainant here has sued, can be influential in determining what the value of the interest of the complainant in

the corpus of the property involved in the contract was; and an exception.

103 Mr. TRAVIESO: If Your Honor please, may I state another ground of objection to the testimony?

The COURT: Certainly.

Mr. TRAVIESO: I object to the admission of this testimony as to the value of the franchise after the case has been closed, submitted to the Court and decided, this evidence perhaps being admissible when the complainant was proving his case, as part of his main case, but not at this late hour after the case has been decided by the Court.

The COURT: The objection is overruled for the reason that by consent of attorneys in open court, a time was fixed, which is the time of the present hearing, at which an assessment of the value of the interest of the complainant would be had; and an exception. Proceed.

Q. Mr. Teele, I show you three paragraphs lettered (*b*), (*c*) and (*d*) of a contract between Ramon Valdes and J. G. White & Company, dated January 14, 1905, and identified as complainant's Exhibit R, and ask you if the properties listed in those three paragraphs are now the property of the company which you represent.

The COURT: I suppose the same objection is made to every question.

Mr. TRAVIESO: Yes, sir.

The COURT: And the same ruling.

Mr. TRAVIESO: And an exception.

A. Yes, sir.

Q. Will you please state to the Court what the value of those properties is at the present time?

104 Mr. PAINE: I will then ask him what the value was at that time.

The COURT: The same objection and the same ruling and an exception.

A. The total acreage which we have at the present time at Comerio is 46¾, and the value which was placed upon that for taxation purposes, and which was an estimate carefully made, was $8,545.00. That was the value as sent us by the Board of Directors.

Q. And that value includes the properties bought of Mr. Valdes?

A. That value includes the properties bought of Mr. Valdes.

Q. In your opinion, is that a full and fair valuation of the property?

A. It is certainly all the land is worth.

Q. In the year 1905, were those properties worth more or less than the figures you have just given?

A. The properties were worth considerably less, as they were not accessible by a good road as they are at the present time, and of course the country all through there has been developed considerably in the last five years.

Q. Mr. Teele, do you know the present value of the stock and bonds of the Porto Rico Power & Light Company?

A. There are no stock and bonds in the company at all. The Porto Rico Railways Company holds all of them.

The COURT:

Q. Do you know what valuation is placed upon them?

A. I can't tell you that. I can give you the value of the holding company's stock and bonds.

Q. Can you tell what proportion the stock and bonds of the Porto Rico Light & Power Company bear to the stock and bonds of the Porto Rico Railways Company?

A. Roughly speaking, I should say about a third. I
105 couldn't give you that offhand because I haven't looked it up. The Porto Rico Railways Company owns all the stock of the Porto Rico Power & Light, the Caguas Tramway Company and the San Juan Light & Transit Company.

Mr. PAINE:

Q. Can you tell, Mr. Teele, whether the Porto Rico Light & Power Company contributes revenue to the Porto Rico Railways Company under your form of book-keeping?

A. Not at the present time; they have gone out of business entirely and are operated as the Porto Rico Railway, Light & Power Company.

Q. I will ask Mr. Teele what the present value of the stock and bonds of the Porto Rico Railways Company is.

A. The bonds are 95 bid and the stock 81 bid. There is generally a quarter of a point more on the worth of the bonds and half on the stock. I have the latest Canadian papers which give that.

Mr. PAINE: We have before Your Honor evidence tending to establish the proportion of the purchase under that contract that the other property other than the franchise might be held to bear, and we have evidence before Your Honor of the present value of the stock and bonds, what the purchase price is.

The COURT: You have not got the total issue of the stock and bonds of the Porto Rico Railways Company.

Mr. PAINE: No, but assuming that the consideration conveyed by this contract was the franchise and these other properties, and that these other properties were not worth more than, say, $8,-
106 000.00, it is reasonable to urge that eight or ten thousand dollars should be deducted to cover the purchase price of all these properties, and the rest for the value of the franchise, and under the bill for specific performance, we are entitled to the actual value of the stock and bonds, plus whatever interest has been paid on the bonds and dividends on the stock.

Q. Mr. Teele, do you know what rate of interest has been paid on the bonds of the Porto Rico Power & Light Company since 1905?

A. You mean the Porto Rico Power & Light or the Porto Rico Railways Company?

Q. The Porto Rico Power & Light Company.

A. They have not been segregated at all.

The COURT:

Q. The concern was in existence in 1905 and continued in existence until 1909, did it not?

A. Yes, it has been in existence up to 1909.

Q. Was there any interest paid on the bonds?

A. There were certain earnings which were paid. That I cannot give you off-hand.

Q. The bonds bore a certain rate of interest, did they not?

A. Yes, but I have not got that data. I can get it for you.

Q. That is from any information in Porto Rico?

A. Yes, sir; I can get the information in Porto Rico.

Q. Do you know whether any dividends have been paid on the stock of that company?

A. I can tell you the dividends of the holding company.

Q. That we are not interested in now.

A. I have the data which Mr. Paine asked me to get for you.

107 Q. Can you furnish that in the shape of a communication?

A. Yes, sir; I will write you a letter to that effect.

The COURT: Which will be considered as being under the same oath that he himself is now.

Mr. TRAVIESO: I would like to enter an objection.

The COURT: It is entered to all the questions; all the testimony of this witness.

Q. Do you know whether or not Mr. Ramon Valdes is a bond and stock holder in the Porto Rico Power & Light Company?

A. He is not; all the stock and bonds of the Porto — Light & Power Company are held by the Porto Rico Railways Company, every share.

Q. Were the stocks and bonds of the Porto Rico Railways Company issued to holders of bonds and stock of the Porto Rico Power & Light Company in exchange therefor upon the merger?

A. At the time of the purchase from J. G. White, they paid for securities of the Porto Rico Power & Light Company so much in total, so much for the Caguas Tramway Company in total, and so much for the San Juan Light & Transit Company.

Q. How did you dispose of the bond and stock holders of the Porto Rico Power & Light Company?

A. They were delivered en block.

Q. How were they compensated?

A. The J. G. White Company, the deal was made through them and they turned over on the payment all the stock and bonds of these companies.

Q. Suppose Mr. Ramon Valdes, at the time it was turned over, was *was* the holder of stock and bonds in the Porto Rico Power & Light Company, did he get payment in cash or in other secu-

108 rities?

A. We never paid him, that is, the Porto Rico Railways Company. He was paid by J. G. White & Company.

Q. You don't know whether he was paid in cash or securities?

A. I do not.

Q. Upon what basis were the bonds and stock of the Porto Rico Power & Light Company turned over when the transfer was made?

A. For so much of the securities of the Porto Rico Railways Company.

Q. That is, roughly, one-third?

A. Roughly, one-third.

Q. Of the bonds and one-third of the stock?

A. Yes, sir.

Q. What is the total bonded indebtedness of the Porto Rico Railways Company?

A. The present outstanding issue of the Porto Rico Railways Company is two million seven hundred and some odd thousand; I haven't got that.

Q. And bearing what rate of interest?

A. Five per cent.

Q. And of stock?

A. Three million dollars.

Q. It is to be presumed that at least that portion that is concerned with the Comerio Falls must have some water in it; is that correct?

A. Perhaps so.

Mr. PAINE: I would like to call Your Honor's attention to one fact, that Mr. Valdes has absented himself.

109 Mr. TRAVIESO: I can state for Mr. Valdes that he tried to get a postponement.

The COURT: He knew it was going to be tried and he had his election. He could have had him here by simply subpœnaeing him, so the inference is just as strong that you didn't want him as that he absented himself.

A. Pardon me, I want to make that more explicit. That is the total issue, but they were issued as they were required for the construction. That covers all the construction that is carried on at that place, and they were issued as they were needed.

Q. The securities are not currently quoted on the market?

A. The holding company is quoted on the exchanges in Toronto and Montreal.

The WITNESS: You request me to give you in writing the dividends paid by the Porto Rico Power & Light Company to the Porto Rico Railways Company?

The COURT: I just want to know what the income was, and I also want to know what rate of interest the bonds bore.

The WITNESS: I will get that information this afternoon or tomorrow and forward it to Your Honor.

Witness retires.

110 *Stenographer's Certificate.*

I, Arthur J. Harvey, Official Stenographer of the District Court of the United States for Porto Rico, hereby certify that the fore-

going document, consisting of seventy-two typewritten pages, is a true and correct transcript of all the oral evidence offered upon the trial of the case of Tulio Larrinaga v. Ramon Valdes, in the District Court of the United States for Porto Rico, in the month of June, 1912, which testimony was reported by me in shorthand at the time of said trial and was thereafter by me transcribed from my shorthand notes.

ARTHUR J. HARVEY,
Official Stenographer of the District Court of the United States for Porto Rico.

111 EXHIBIT "A" FOR PLAINTIFF.

Filed July 13, 1912.

Linea Ferrea del Oeste.
Ramon Valdes.

BAYAMON, P. R., *October* 30, 1898.

Mr. Tulio Larrinaga, Capital.

MY DISTINGUISHED FRIEND: I have applied for a water franchise from the river Plata, place called "Salto" for the purpose of developing electric power to be applied to several industries, as you know, from my application which went through you while you were Ass't Secretary of "Fomento" (Now Department of the Interior)

So that you may help me in getting it through, and in all the rest in connection with said franchise, such as plans, projects, and in everything concerning the technical part thereof, I need a person of my absolute confidence, and as you deserve it fully to me, and not believing that this is inconsistent with your present position of Chief Engineer of Harbor Works, I propose to interest you in the profits of said concession in the amount of a 10%, provided that you accept the obligations hereinabove mentioned.

Hoping that my proposition will be satisfactory to you,
I remain, etc.

R. VALDES COBIAN.

The above is a correct translation
(Signed) F. FANO,
Interpreter & Translator U. S. Court.

EXHIBIT "B" FOR PLAINTIFF.

112 Filed July 13, 1912.

PORTO RICO, *October* 31, 1898.

Sr. Don Ramon Valdes y Cobian.

MY DISTINGUISHED FRIEND: I am in receipt of your favor of the 30th inst. wherein you propose me a share of 10% in the property

of the concession for the utilization of waters from the La Plata river at the point called el Salto, near Comerio, I, in exchange to help you in the steps to be gone through and in everything in connection with said concession, such as plans, projects, and all what concerns to the technical part.

I hereby accept the participation of 10% of said concession in exchange of my personal or professional services without any obligation on my part *of* make any pecuniary disbursement for exploiting or conveying said concession.

Very truly yours,

T. LARRINAGA.

The above is a correct translation
(Signed) F. FANO,
Interpreter & Translator U. S. Court.

EXHIBIT D FOR COMPLAINANT.

113 Filed July 13, 1912.

Linea Ferrea del Oeste.
Ramon Valdes.

BAYAMON, P. R., *April* 11, 1899.

The Honorable the Secretary of the Interior:

On account of my having to leave the Island for some time, and having to intervene in matters in which I am concerned and which are dependent upon that Secretaryship, I have the honor to inform you that I have authorized my consulting engineer Mr. Tulio Larrinaga, to represent me in everything.

Respectfully,

R. VALDES COBIAN.

The above is a correct translation
(Signed) F. FANO,
Interpreter & Translator U. S. Court.

EXHIBIT "E" FOR PLAINTIFF.

114 Filed July 13, 1912.

No. 201.

SAN JUAN, U. S. OF A., *May 19th*, 1899.

I have the pleasure to inform you that the Director of Public Works has fixed the 20th inst. as the day of examination and verification upon the ground, of the project submitted by Messrs. A. L. Arpin and G. Noble, for the use of the waters — the La Plata river.

Which I communicate to you, as an opponent to said project, in

compliance with the provisions of the law, so that you may attend to said act if you so desire.

Yours respectfully,

F. DEL VALLE ATILES,
Secretary of the Interior.

Mr. Ramon Valdes Cobian.

The above is a correct translation
(Signed)
F. FANO,
Interpreter & Translator U. S. Court.

EXHIBIT "F" FOR PLAINTIFF.

115 Filed July 13, 1912.

Hotel Lafayette, Philadelphia.

JANUARY 25th, 1901.

Sr. Don Tulio Larrinaga, San Juan, P. R.

MY DEAR DON TULIO: Yours of the 6th and 16th inst. received. Together with the first one I received one in English referring to the probable application of the electric power as motive power for the sugar factories. I consider it very proper and have shown the letter to the other parties who are well impressed with it.

In your second letter you inform me as to the telegram received by you from Mr. Cosby, and that you would immediatel- leave for El Salto. It is very urgent that you should send us as soon as possible the plans because we need them badly here, so much so, that without them we can do nothing definite, as we have to make estimates from them and consequently the amount of capital that it will be necessary to raise. This is imperative as you will understand.

I am very sorry to learn about Antonio Geigel's illness, and hope that he will have pulled through if such is the will of God.

Everything concerning the preliminaries of the Association are going on well, the only thing that detains us is the lack of basis to fix the amount of capital necessary.

Give my regards to your esteemed family and believe me your truthful friend,

R. VALDES.

N. B.—The most urgent thing is the survey of the dam and the piping and the rest will come afterwards.

116 We are in great need of a map of the bay as drawn by Churruca showing the soundings with a view of finding out if it would be advisable to carry the line of wires directly through the bay to the capital passing by the shoals. This would shorten the distance of the main line, which is the expensive one, in about 9 kilometers.

The above is a correct translation.
(Signed)
F. FANO.
Interpreter & Translator U. S. Court.

EXHIBIT "G" FOR COMPLAINANT.

117 Filed July 13, 1912.

Hotel Lafayette, Philadelphia.

FEBRUARY 8TH, 1901.

Mr. Tulio Larrinaga.

MY DEAR DON TULIO: I am in receipt of your letter of the 22nd of January, giving me details of all what occurred on account of the taking off of the titles of property of the lands of El Salto, for which the deed of sale was made in accordance with my instructions which was also received by me in the same mail which brought your letter. For the present I do not think it will be necessary to make the survey which you suggest, so as to register them all. It has only been registered the land purchased from Barbara Ortega and I do not understand why the Eduviges Nieves and the Del Valles have not been also registered, the former has been registered by a possessory expediente and the latter is registered by virtue of the judgment rendered in the Noble suit. Upon my return there it will be fixed if necessary.

In your said letter you say nothing about the works entrusted to you by the Company "The Rio Plata Electric Company" and we are here anxious and waiting for it.

According to the terms of the franchise, the works should begin 60 days after the signing of the franchise, this was signed on December 18th, therefore the 60 days should expire between the 16 or 17 of February, and before that time we have to show officially that the works have been commenced. I am writing today to Dexter so that in accordance with you, and in view of the works so far executed, he may address a letter to the Executive Council or to the Secretary of Porto Rico, reporting to him the work in course
118 of construction. (I enclose herewith a rough draft, according to my own views but you may modify it if you deem it advisable.)

The franchise provides that the plans should be submitted to the Commissioner of the Interior and if that is the case then you should prepare the plan for the foundations of the power plant for its approval setting forth at the same time that the work will begin with said foundations. (I also enclose herewith a rough draft for this case.)

This is very important because if we should fail to do it within the time allowed we might forfeit the $10,000, of the bond and besides the forfeiture of the franchise and it is useless to say, that both the Company and myself have absolute confidence in you and in Mr. Dexter, so that you should see to it that all these formalities be complied with, it being much easier to carry them out than to make the deposit of the $10,000.

We have gone pretty far in the matter of the steps which we have

to take before we can issue bonds and I believe that within two weeks we will have accomplished everything including the contracting of materials.

Once that we have complied with the requisite of beginning the works within the period of time designated, please tell my clerk Manuel to send me a telegram saying "Complied with."

Mr. Vail is wondering why he has not received letters from you in reply to those which he has addressed to you with reference to the works of "El Salto."

Believing that nothing out of the way will occur, I remain your truthful friend.

R. VALDES.

Give my regards to your esteemed family.

The above is a correct translation.

(Signed) F. FANO,
Interpreter & Translator U. S. Court.

EXHIBIT H FOR COMPLAINANT.

119 Filed July 13, 1912.

Hotel Lafayette, Philadelphia.

FEBRUARY 15TH, 1901.

Mr. Tulio Larrinaga.

MY DEAR DON TULIO: I am in receipt of your letter of the 31st of January, informing me that all the instructions transmitted by you to Mr. Vail and Mr. Cosby, are being carried out. Am very glad.

Now I have just received a telegram which says "Complied with" which in accordance with my last letter means that all the necessary formalities to show officially that the works have been started within the 60 days provided for in the franchise, have been carried out.

Mr. Vail and Mr. Crosby have observed with regret that you have not followed closely their instructions with reference to the excavations for the foundations of the power house for which there had been fixed a general depth of five feet if I do not remember wrong, and afterwards to make borings until a solid surface should be found; while according to the letter of Mr. Vail, the excavations have been made deeper and no borings made. This people like that their instructions be strictly followed and it makes them feel bad not to do so.

It was my desire that you should have received by this mail instructions to start at once the dam, but Mr. Cosby objects to it, pending the receipt of the plans for the location of the same as well as the others which they have already asked from you, and which they believe must be on their way.

We will take into account your suggestions with reference to increasing the section of the pipe.

120 Mr. Vail will write you in detail.

I agree with you that it is necessary to construct a shed but nothing has been decided so far.

You may tell to that people to begin preparing timbers and offer to buy it at suitable prices in comparison to American timber, and the difference which also exists in the labor against that of the country. Likewise you may begin piling such stone as may be useful and good for the construction of the dam. I do not think that any stone with smooth surfaces will be good for the dam as to render it safe.

We will see whether we will finally decide to build the shed in which case Mr. Vail will write to you.

Hoping that by the mail due after tomorrow we will receive the plans which we are expecting, I remain,

Your true friend,

R. VALDES.

The above is a correct translation.

(Signed)

F. FANO,
Interpreter & Translator U. S. Court.

EXHIBIT "I" FOR COMPLAINANT.

121 Filed July 13, 1912.

Hotel Lafayette, Philadelphia.

Mr. Tulio Larrinaga.

MY DEAR FRIEND: I am in receipt of your favor of the 25th of last month, and I learn from it that you were right in doing things as you did, with reference to the excavations for the power house, and of that Mr. Cosby and Mr. Vail are already convinced, and further, satisfied with your work, of which I am very glad because there existed certain friction which was very disagreeable to me.

All this is due to the fact that these Americans do not believe that anybody knows anything but themselves, and hence they do not rely on the work of others.

By this boat there must have been shipped the 500 bags of cement which I announced you in my last letter, and also a blueprint plan with a drawing of the dam. As this must have embedded in its walls a sliding door for cleaning purposes and besides that, the lock gate, the grating and the pipe opening, the two last pieces being of iron and having to be manufactured here, I think it will not be possible to push on the work of the dam until those pieces are available, which I intend to secure at the earliest possible date. By next mail I will be in a position to give you definite news.

For the present I do not think it would be advisable to approach the sugar planters, but later on, when we will be able to furnish

prices on apparatuses, cost of the current, and other data which are necessary in order that they may make up their minds.

Without time for more, I remain your truthful friend,

R. VALDES.

EXHIBIT "J" FOR COMPLAINANT.

122 Filed July 13, 1912.

Hotel Lafayette, Philadelphia.

MARCH 1, 1901.

Mr. Tulio Larrinaga.

DEAR FRIEND DON TULIO: I am in receipt of your esteemed letter of the 19th ultimo, wherein you inform me that you have been very busy with the remittance of the plans, and that therefore you had no time to speak about any other matter except that the formality of showing that the works had started had been complied with.

The plans have not arrived complete, we have only received the sections drawn at the site of the dam, horizontal plan showing the bend in the river where the waters are still, and the plan of the foundations for the power house. There is lacking the plan to determine the location to which the cross-sections belong, so as to be able to determine the drawing of the dam, and therefore, we are unable to give concrete instructions by this mail as to the construction of the said dam, and for this reason I am very much disgusted and am afraid that on account of this delay we are going to lose the opportunity of the dry season, to the great detriment of the enterprise. I was, and still am of the opinion, that instructions should have been given you to start at once the works of the dam, but Major Cosby is opposed to it, until we receive the other plans. However, I will inform you as to our plans, so that, in accordance with them, you may proceed to arrange things in such a manner as that by next mail, when you receive said instructions, you will be ready to push on the works firmly.

It is our intention, for the present, to construct the dam more or less of the same height as had been projected by Sr. Cervera,
123 which plans are attached to the expediente of the concession, making it higher at the end where the pipe is to be embed-ed, with the purpose of making a stronger connection with the masonry. The basis, consequently, will have to be in relation with said increase in heig*hth* although said heighth may not be uniform for the present. We intend, later on, if the necessity should arise, to increase the heighth of the dam, and to that effect, the proper site for the foundations should be chosen so as to be able to increase the width of the wall of the dam on its down stream face, as may be necessary in proportion to the increase in height which may be required on its day, as shown in the enclosed sketch. By next boat there will be shipped 500 bags of cement prepared to be carried on pack horses.

Bearing this in mind, you may go on preparing other preliminary works as are necessary, pending the arrival of the plans and of the cement, including in it the cofferdam, because as the site for the same is almost obligatory it may be constructed leaving enough space up stream at the place where you think the dam should be erected. You may proceed with the desiccation work, preparation of stone and sand, preparation of masons (There are quite many in Bayamon, among whom there is one master Anastasio Correa, alias Tuto, who is intelligent and able to read a plan, and he may act as foreman of the other masons and help you in securing their services) you may also contract with Pumarada, or with any other who offer better terms for the transportation of the cement so that immediately after its arrival not one second be lost to commence the works so as to try and finish them within the dry season. It occurs to me, and I suggest it to you, so that you may judge as to its advisability to make the cofferdam with bags full of earth somewhat soft so as to obtain a good binding. You will determine.

Hoping that the missing plans will be received by next
124 Monday the 4th, and that we will have no further trouble for the next mail, I remain

Your truthful friend,

R. VALDES.

The above is a correct translation.

(Signed) F. FANO,
Interpreter & Translator U. S. Court.

EXHIBIT "K" FOR COMPLAINANT.

125 Filed July 13th, 1912.

Cable: Valdesman, New York.

540 W. 113 TH ST.,
NEW YORK, *July 29th*, 1901.

Sr. Don Tulio Larrinaga.

MY ESTEEMED FRIEND: I am in receipt of your letter of the 18th and contents duly noted with thanks for the interest which you take for matters concerning my enterprise. Subsequently I also received your cable notifying me that the petition for an injunction interposed by Mr. Arpin had been denied, which information was confirmed likewise by Mr. Dexter. Now I believe that said good gentleman of Mr. Arpin will not expend more money in vain, in spite of the fact that his lawyers will try to make him continue his proceedings.

With reference to your suggestion that it would be advisable to push on the works a little, I agreed with you, but as I am pushing along as rapidly as possible the termination of the contract and the raising of funds, which I think will be finished by the week following that of the 4th of July, hence it will be better not to do anything in the meanwhile. As to the rest your proposition is just as

equitable and favorable as it could be, and we will accept it if we should see that the rest is delayed.

I see that the other Company is going from bad to worse, they expect that with the new Director who had substituted Mr. Smith conditions will improve. I am in dealings with said Company so that they should not intervene in the lighting hereafter.

In case you need to use the cable do it through the Western Union Code, which they use at the cable office and is the one that I use and will use for my dispatches.

I have learned that the marriage of Ciela will take place
126 on the 3rd of next July; wishing them all sorts of happiness and eternal bliss, I remain your truthful friend.

RAMON VALDES.

The above is a correct translation.

(Signed) F. FANO,
Interpreter & Translator U. S. Court.

127 EXHIBIT "L" FOR COMPLAINANT.

Filed July 13, 1912.

Ramon Valdes and J. C. White & Company, Inc.

Agreement.

128 2034.

This agreement, made at New York City, this 14th day of January, 1905, by and between Ramon Valdes, a citizen of the kingdom of Spain, residing in the City of New York, and doing business in San Juan, Porto Rico, party of the first part, and J. G. White & Company, Inc., a corporation duly organized under the laws of the state of Connecticut, hereinafter called the "Company," party of the second part, Witnesseth:

Whereas, Luz Electrica is a corporation duly organized under the laws of Porto Rico, and doing an electric light and power business at San Juan, Porto Rico, having a capital stock of the par value of $63,500, divided into 635 shares of the par value of $100 each Porto Rican currency, $1 of said Porto Rican currency being by law established as of the value of 60 cents American gold; and

Whereas, said Valdes represents that he owns or controls each and every of the aforesaid shares of the capital stock of said Luz Electrica, and that said Luz Electrica is indebted to said Valdes and others in divers sums, which indebtedness the said Valdes is to pay and discharge, reimbursing himself out of the moneys and securities to be received by him as hereinafter set forth; and

Whereas, said Valdes represents that he is also the owner of or controls certain rights, properties, privileges, franchises and concessions at or about the Comerio Falls, on the Rio de la Plata, in the island of Porto Rico, and that he is also the owner of certain lands

and of easements at or near the said falls, and of certain
129 options on lands to be used in connection with the water power of said falls, the said rights, properties, privileges, franchises and concessions including the following:

(*a*) Concession or franchise granted, and alleged to be forfeited by the Executive Council of Porto Rico to Ramon Valdes for the use of Comerio Falls water power, and transmit same to San Juan, etc.

(*b*) Certain lands and buildings thereon, standing in the name of said Valdes, in the barrio "Doña Elena";

(*c*) Certain easements in and over lands to be used in connection with said power development;

(*d*) Certain options for acquisition of lands affected by said easements and convenient for such purposes;

and

Whereas, the said Valdes represents that he has petitioned, or is about to petition, or cause a petition to be filed, for a concession or franchise authorizing him or his representatives, among other things, to use the water of said Rio de la Plata, at or near said falls, for the development of power by building dams, canals, raceways and apparatus for power development, or confirming him or them in such rights; and

Whereas, the said Valdes desires to sell all said holdings of stock in the said Luz Electrica, and also desires to sell all of his right, title, interest and claim in and to the aforesaid rights, properties, privileges, franchises and concessions acquired, or to be acquired, by him, or on his behalf, in or about said water power development, at or about said Comerio Falls, and all engineering and other data and documents connected therewith which he has, and is willing and desires to take in payment therefor a certain sum in cash and certain amounts of the bonds and stock of a new corporation which it is proposed to form, hereinafter called the "New Company"; and

130 Whereas, the Company, party hereto of the second part, desires on its part to acquire and transfer to the New Company both the said securities of the Luz Electrica and also all the rights, properties, privileges, franchises and concessions which the said Valdes own- or controls, or may own or control, at or about said Comerio Falls;

Now, Therefore, in consideration of the premises and of One Dollar lawful money of the United States by each of the parties hereto to the other in hand paid, the receipt whereof is hereby acknowledged, and of the mutual covenants and agreements hereinafter contained, the parties hereto covenant and agree to and with each other, as follow:—

I.

The said Valdes agrees, for and in consideration and upon the receipt of Fifty thousand dollars ($50,000) in cash and Eighty-three thousand three hundred and thirty-three dollars ($83,333) par value of the bonds of the said New Company to be formed as set forth in Paragraph III of this agreement, and One hundred and twenty-three thousand three hundred and thirty-three dollars ($123-

333) par value of the stock of said New Company, to sell, convey, transfer and deliver, or cause to be sold, assigned, transferred and delivered, to the Company or its nominees all and every of the shares of the capital stock of the said Luz Electrica, and he agrees that at the time of said transfer all the debts of said Luz Electrica shall have been paid and its assets shall be free and clear, and that he will, with the transfer of stock, deliver to the Company or its nominees evdences of the payment of all indebtedness of the Luz Electrica.

II.

The said Valdes agrees, for and in consideration of Twenty-
131 seven thousand seven hundred and seventy-eight dollars ($27,-778) par value of the bonds of said New Company and One hundred and two thousand seven hundred and seventy-eight dollars ($102,778) par value of the stock of said New Company, to sell, convey, transfer and assign, or cause to be sold, conveyed, transferred or assigned, to the Company or its nominees all the aforesaid rights, properties, privileges, franchises and concessions of every kind or nature, at or about the said Comerio Falls, on the said Rio de la Plata. The said bonds and stock of the New Company, constituting the consideration for the said rights and properties at or about said Comerio Falls, shall be deposited in escrow, upon the transfer and conveyance of said rights and properties, no later than April 1st 1905, and said bonds and stock shall be delivered to the said Valdes as his property as soon as the New Company has obtained a valid and sufficient title to all the above mentioned water rights, properties, privileges, franchises and concessions and to the franchise or concession applied for, or about to be applied for, for the development of power by building dams, canals, raceways and transmission lines and other apparatus, and is in possession and use thereof, with full right to develop same. Upon such final delivery to the said Valdes, the coupons attached to said bonds for not exceeding one year's interest shall also be delivered to him, representing interest from the date of his said transfer of said water power privileges, properties, rights, franchises and concessions to the Company or its nominees, to date of such delivery.

III.

The Company, party hereto of the second part, covenants and agrees that it will cause to be formed a corporation, which is herein called the "New Company," with securities as follows:

Bonds, ... $500,000.
Stock, ... 750,000.

132 The said New Company shall be incorporated under the laws of such state as may be selected by counsel as the most desirable and the most economical for incorporation, and the incorporation thereof shall be commenced forthwith and shall be completed within twenty days from the date hereof.

The bond issue of $500,000 of the New Company hereinbefore

mentioned shall be secured by a corporation mortgage in the usual corporate form, and the said mortgage shall contain the usual provisions for certification and delivery of the bonds, providing that the bonds not issued to said Valdes hereunder or to raise $50,000 cash as herein specified shall be issued only upon engineer's certificates of work done or for cash.

IV.

The Company, party hereto of the second part, further agrees that it will cause the $750,000 par value of stock and the bonds deliverable to the said Valdes out of said bond issue of $500,000 as of the said New Company, to be issued to it or its nominees as fully paid, by the transfer to the said New Company of all the securities and properties acquired hereunder from the said Valdes, and the Company, party of the second part hereto agrees that all stocks, rights and properties received from said Valdes shall forthwith and simultaneously to be sold, assigned, transferred and delivered to said New Company, and that the said New Company so fully paid, shall be distributed and employed as follows:

(*a*) For cash required to develop the water power and other extensions and improvements, Two hundred and eighty-three thousand three hundred and thirty-three dollars ($283,333) par value of bonds and Two hundred and eighty-three thousand three hundred and thirty-three dollars ($283,333) par value of stock of said New Company, and said J. G. White & Company will use its best efforts to sell said bonds, but does not guarantee to sell them.

133 (*b*) For the purpose of raising fifty thousand dollars ($50,000) cash, payable to said Valdes as in Paragraph I hereof provided, Fifty-five thousand five hundred and fifty-six dollars ($55,556) par value of said bonds of said New Company shall be sold and an equal amount of stock shall be delivered therewith; to ensure payment thereof, said J. G. White & Company agrees to pay Fifty thousand dollars ($50,000) for said stock and bonds unless same are sold at that price to some other purchaser, or at a better price.

(*c*) To be delivered to the said Valdes, in addition to the said $50,000 cash, in payment for the capital stock of the Luz Electrica, and upon the transfer thereof free and clear of all debts pursuant to Paragraph I of this agreement, Eighty-three thousand three hundred and thirty-three dollars ($83,333) par value of bonds and Eighty-three thousand three hundred and thirty-three dollars ($83,333) par value of stock, also stock of the par value of Forty thousand dollars ($40,000), a total of One hundred and twenty-three thousand three hundred and thirty-three dollars ($123,333) par value of stock of said New Company, the said Valdes shall have the right to cancel this agreement if the said cash payment of $50,000 and of said securities is not made to him, no later than April 1, 1905.

(*d*) To be deposited in escrow upon the transfer by said Valdes of all his rights, properties, privileges, franchises and concessions, at or about the Comerio Falls water power, Twenty seven thousand

seven hundred and seventy-eight dollars ($27,778) par value of bonds of the New Company, and also stock of the said New Company of the par value of Twenty-seven thousand seven hundred and seventy-eight dollars ($27,778), and, in addition Seventy-five thousand dollars ($75,000) par value of said stock, making a total of stock amounting to One hundred and two thousand seven hundred
134 and seventy-eight dollars ($102,778).

(e) The balance estimated at $185,000 par value of the stock of the New Company, after providing for the amounts hereinbefore mentioned, is to be apportioned and distributed to the Syndicate Managers and to J. G. White & Company for their services and financial support, and from the stock so received said White & Company will contribute, if necessary, an amount equal to One thousand dollars ($1,000) par value for each $1,000 bond sold in excess of said above mentioned bonds left in the treasury, or such less amount as will enable said bonds to be sold on as favorable terms as those originally subscribed for hereunder. In the event that within twelve months after the New Company has obtained the water power concession so that it can proceed with the development thereof, said J. G. White & Company shall not have secured sufficient underwriting of said $283,333 par value of bonds and stock by solvent underwriters to equip and develop said water power and generating plant in connection therewith, then all said balance of stock so apportioned to J. G. White & Company and the Syndicate Managers estimated at $185,000 par value shall be turned over to said Valdes.

V.

The stock of the Luz Electrica and evidences of the payment of the indebtedness thereof shall be delivered at the office of J. G. White & Company, 43 Exchange Place, New York, the cash and securities above specified being delivered to said Valdes at the same time and not later than April 1, 1905. The transfer and conveyance of the rights, properties, privileges, franchises and concessions at or about said Comerio Falls shall be made, executed and delivered, or caused to be made, executed and delivered, by said Valdes at the same time and place, upon the simultaneous deposit in escrow of the securities representing the purchase price thereof.

135 Pending the preparation of the permanent securities of the New Company, temporary stock certificates representing the stock thereof and temporary bond certificates shall be delivered upon the surrender of which the formal stock certificates and bonds shall thereafter be issued and delivered as speedily as they can be prepared.

The period for the delivery of any of the securities or moneys deliverable by either of the parties hereto to the other hereunder, or for the execution and delivery of any of the transfers herein provided for, may be extended by written memorandum endorsed on any copy of this contract and signed by each of the parties hereto, or by his or its attorney thereunto duly authorized.

VI.

The said Valdes represents, warrants and agrees that the operations of the said Luz Electrica for the eleven months ending November 30, 1904, resulted substantially, as follows:

Explotacion en 1904.

(Noviembre 30.)

Productos.

Abonados particulares	$34,465.27	
Alumbrado publico	15,548.59	
Id. extraordinarios	920.60	
Instalaciones	1,385.20	
Id. extraordinarias	1,105.43	
Rentas de aparatos	1,940.45	
	$55,365.55	
Rebajas	305.87	
		$55,059.68

136 Gastos.

Combustible: 2485 '99 T. carbon	$15,011.81	
Lena	855.75	
	$15,011.56	
Consumo de agua	227.55	
Empleados	13,222.48	
Reparaciones Planta Mecanica	1,558.94	
id. id. Electrica	213.55	
id. lineas	1,110.75	
id. edificios	53.32	
Limpiezas de calderas	156.65	
Engrases y empaque taduras	574.91	
Planta	312.01	
Servicio especial abonados	420.46	
Arrendamientos	533.38	
Contribuciones	560.21	
Gastos varios	1,326.95	
		35,282.72
Beneficio		$19,776.96
De instalaciones extraordinarias benef. en Nov		261.39
De explotacion		2,062.46

to which should added certain profits from other sources.

And that the net earnings for the year 1904 are approximately Twenty-four thousand dollars ($24,000), and in no event are less than Twenty-two thousand dollars ($22,000), including interest paid

or payable, and it is expressly understood and agreed that if the said net earnings, without deducting interest to be paid, of the said Luz Electrica for the year 1904 do not equal Twenty-two thousand dollars ($22,000), the Company, party hereto of the second part may cancel this agreement. All figures mentioned in this paragraph are in gold coin of the United States.

Said Valdes agrees at any time after the execution and delivery of this agreement, to give access to the books and inventories of the Luz Electrica to the representatives of the Company and of the New Company, for the purpose of confirming the figures, assets and earnings herein mentioned.

VII.

The said Valdes represents, warrants and agrees that the assets of the said Luz Electrica taken at the same inventory basis are substantially the same as at the end of the year 1903, and that the following is an inventory of the assets as of December 31, 1903:

137 *Balance Del* 31 *De Diciembre,* 1903.

Activo.

Caja	$883.53	
Edificios	5,343.54	
Maquinaria	22,324.98	
Material electrico	40,255.53	
Gastos de instalaciones	23,268.63	
Mobiliario	494.10	
Herramientas y enseres	1,822.49	
Almacen	16,389.41	
Carbon	853.65	
Material en venta	1,001.93	
Instalciones de n propiedad	902.76	
Contribuciones atrasadas	1,665.54	
Contrato de alumbrado	431.34	
Contrato con Obras Publicas	75.90	
Cedular hipotecaria B. F. y A	50.00	
Aseguro contra incendio	28.15	
Linea circuito No. 3	29.25	
Acciones en fianza	900.00	
Debito por hipoteca	50,000.00	
Cuentas corrientes-Deudores	10,727.56	
		$177,448.29

It being understood, however, that the item "Debito por hipoteca," $50,000" and the item "Acciones en fianza, $900.00" are cross entires and should be omitted from the assets.

And the said Valdes agrees that the assets of the said Luz Electrica shall not be diminished pending the completion of the transfers herein provided for, except that the said Valdes may withdraw

any cash in bank on December 31, 1904, in excess of $883.53, on account of undistributed earnings.

And it is understood and agreed that if the current coal and supplies on hand, cash or good accounts receivable, at the time of the transfer exceed or are less than the amounts shwon upon the inventory of assets dated December 31, 1903, the excess or deficiency, as the case may be, shall be equalized either by a payment *of* said Valdes by the Company of the excess, or a credit to the Company by said Valdes of the deficiency, as the case may be.

The items of the inventory taken hereunder shall be valued on the same basis as those of the inventory dated December 31, 1903, and current accounts carried forward from December 31st
138 1903 shall be carried at same figures, and no depreciation shall be charged on plant items since December 31st 1903.

VIII.

The parties hereto agree that they will co-operate with each other and will use their best efforts in furthering the obtaining of the franchise or concession for the use of water power of the Comerio Falls, by building dams, canals, raceways and apparatus for power development or confirming the existing claims thereto as is herein mentioned.

IX.

If the said New Company fails, under the said transfers from said Valdes or under any application for additional franchises made by said Valdes, or on his behalf, or on behalf of the said New Company, to obtain the right to develop said water power so that it is not in actual possession of the use of said water for power development within three (3) years from the date hereof, then the New Company may at its option, re-transfer to the said Valdes all the rights, properties, franchises, privileges and concessions in or about the said Comerio Falls transferred or deeded by the said Valdes to it, and shall thereupon receive back the Twenty-seven thousand seven hundred and seventy-eight dollars ($27,778) par value of bonds and the One hundred and two thousand seven hundred and seventy-eight dollars ($102,778) par value of stock deposited in escrow in connection with the transfer of said water power privileges and properties, but such re-transfers shall not include or affect the sale and transfer of the stock of the Luz Electrica provided for by this agreement, which shall be an absolute sale.

If the $185,000 par value of stock is returned to said Valdes as herein elsewhere provided, all dividends or profits accruing thereon shall also be returned to him.

139 It is further understood and agreed that the said Valdes will agree with the Luz Electrica and the New Company, upon the receipt of the cash and securities delivered to him in payment for the stock of said Luz Electrica, that he will not engage in any business conflicting with the electric light or electric or water power business of said companies, or either of them, their successors or assigns, in the city of San Juan or its vicinity.

And the said Valdes further agrees that he will, and will have the right to, serve upon the Board of Directors of the New Company and give to it the benefit of his advice and assistance.

XI.

The basis of the amounts of bonds deliverable to said Valdes hereunder is based on a subscription or selling price of bonds at Nine Hundred dollars ($900) for each One thousand dollars ($1,000) bond, One thousand dollars ($1,000) par value of stock being added thereto, and, if the cash subscription price is diminished, then a proportionately greater amount of bonds shall be delivered to said Valdes. But the bonds and stock deliverable to said Valdes hereunder shall in no case be diminished.

XII.

Pending the transfers of and payments for the stock of the Luz Electrica, the Company shall, of course, be operated as now for the benefit of the stockholders of said Company.

XIII.

The expenses which are incurred, after the signing this agreement, in obtaining the franchise for water power, will be paid by said New Company if it obtains a valid franchise as aforesaid, otherwise by said Valdes.

140

XIV.

J. G. White & Company assume no financial responsibility hereunder, except for the purchase of Fifty-five thousand five hundred and fifty-six dollars ($55,556) par value of bonds and stock for Fifty thousand dollars ($50,000), in order to raise Fifty thousand dollars ($50,000) for cash payment to said Valdes on account of purchase of stock of Luz Electrica.

XV.

The agreement shall be binding upon the parties hereto, their heirs, executors, administrators, successors and assigns.

If on examination the water power at minimum proves less than 1,000 horse power, then all covenants herein as to said water power development bay be canceled by said J. G. White & Co.

In Witness Whereof, the party hereto of the first part has hereunto set his hand and seal, and the party hereto of the second part has caused these presents to be signed by its proper officer thereunto duly authorized and its corporate seal to be hereunto affixed and attested by its Secretary the day and year first above written.

R. VALDES.
J. G. WHITE & CO.,
Per P. G. GOSSLER.

In Presence of:
M. SECKENDORF.
M. SECKENDORF.

The period for the delivery of the securities and moneys deliverable under the contract of which the foregoing is a copy, and for the execution and delivery of the transfers therein provided for, is, in accordance with the terms thereof, hereby extended up to and including the first day of June, 1905.

Dated, the first day of April, 1905.

(Signed) R. VALDES.
" J. G. WHITE & CO., INC.,
By J. G. WHITE, *President.*

In presence of
(Signed) W. L. WORRALL.
" H. S. COLLETTE, *Sec'y.*

EXHIBIT "M" FOR COMPLAINANT.

141 Filed July 13, 1912.

Linea Ferrea del Oeste, Ramon Valdes.

NEW YORK, *April* 22, 1905.

Sr. Don Tulio Larrinaga, 1523 I St., Washington.

MY DEAR FRIEND: I beg to acknowledge the receipt of your favors of the 19th and 21 inst.; by the first I received notice of the answer and text of the cablegram of Winthrop, and from the second I withdrew a copy of the letter and the report that the said Winthrop addressed to the President in the matter of the revocation of the Vandergrit franchise. Please receive my most heartful thanks for all.

You say nothing to me with reference to having seen General Edwards and as this gentleman promised me to inform me as to what I was trying to obtain, after Mr. Taft should obtain the information which he had asked from the Department, and inasmuch as this happened in the presence of Mr. Taft, I was unable or failed to tell Mr. Edwards that I had asked you to see him in that regard, this gentleman will have believed that I went away disregarding his valuable offer. Please therefore see him and explain to him the situation. At the same time, I would request you to give my address to one of the officials in front of the desk of Mr. Edwards from whom I asked the Water Law, which he promised me but which I didn't have the time to call for it.

Mr. Charles E. Magoon, wrote me and I am answering him to-day; in my letter I refer to you, saying "by the way, said gentleman is a civil engineer very competent and he has a thorough knowledge of the English, French and Spanish languages.

142 Believe me, your affectionate friend,

R. VALDES.

P. S.—I inform Magoon that you will call on him.

The above is a correct translation.

(Signed) F. FANO,
Interpreter & Translator, U. S. Court.

143 EXHIBIT "N" FOR COMPLAINANT.

Filed July 13, 1912.

Linea Ferrea del Oeste, Ramon Valdes.

NEW YORK, *May 10th*, 1905.

Honorable Tulio Larrinaga, Washington.

MY DEAR FRIEND: I am writing to-day Colonel Edwards, asking him to expedite the question of the signature of the President in the matter already known. I would request you to do whatever you can in the matter as it is a matter of general interest for the Island of Porto Rico, and its delay curtails the development of its natural resources.

Mr. Post is there, and he must be stopping at the New Willard Hotel.

I expect to leave for Porto Rico, on the 3rd of next June in case you should desire to send anything to your family, you may order your friend,

R. VALDES.

The above is a correct translation.

(Signed) F. FANO,
Interpreter & Translator U. S. Court.

EXHIBIT "O" FOR COMPLAINANT.

144 Filed July 13, 1912.

Linea Ferrea del Oeste, Ramon Valdes.

NEW YORK, *May* 29, 1905.

MY DEAR DON TULIO: I would request you to inform me as to the status of the matter of the signature of the President to an ordinance annulling the Vandergrift franchise, because since my last letter to Colonel Edwards and to you in that regard, I have heard nothing further, and I am anxious to learn something definite before I leave, which as I told you in my previous letter, will be next Saturday.

I remain at your orders, your affectionate friend,

R. VALDES.

The above is a correct translation.

(Signed) F. FANO,
Interpreter & Translator U. S. Court.

EXHIBIT "P" FOR COMPLAINANT.

145 Filed July 13, 1912.

Linea Ferrea del Oste. Ramon Valdes.

SAN JUAN, *June* 20, 1905.

Sr. Don Tulio Larrinaga, 1523, I St., Washington.

MY DEAR FRIEND: I have the pleasure of receiving your letter of the 3rd inst. addressed to New York, which reached me in San Juan. By it I see the steps gone through, until obtaining the signature of the President, the ordinance annulling the Vandergrift franchise. Said ordinance was received here some time ago, and for the steps that you have taken I thank you most heartily.

All your family is well. One of these days I will call upon them and at the same time I will ask your wife if she has been able to find the title for the five shares and if so to deliver it to me for the purposes known to you.

Keep well and order your friend.

R. VALDES.

The Governor, Treasurer, Auditor, Commissioner of Education and Judge MacKenna are leaving by this boat.

The above is a correct translation.

(Signed) F. FANO,
Interpreter & Translator U. S. Court.

146 EXHIBIT "Q" FOR COMPLAINANT.

Filed July 13, 1912.

The Arlington, T. E. Roessle.

WASHINGTON, D. C., *July*, 1905.

R. Valdes, 316 West 82nd St., New York.

Find out from Mr. —— —— with respect to the answer of the Governor of Porto Rico.

Find out from General Edwards as to the ordinance which should have been forwarded by the Governor for the President to sign the annullment of the Vendergrift franchise.

In any of both cases find out what they intend to do on the matter and take steps to expedite it, as in the meanwhile the concession cannot be granted to other petitioners.

I would request you to rush answer stating results.

—— ——.

The above is a correct translation.

(Signed) F. FANO,
Interpreter & Translator U. S. Court.

EXHIBIT "R" FOR PLAINTIFF.

147 Filed July 13, 1912.

To the Honorable the Executive Council of Porto Rico, San Juan, Porto Rico.

GENTLEMEN: The undersigned, Porto Rico Power & Light Company a corporation organized under the laws of the state of Maine and duly authorized to do business in the island of Porto Rico, in answer to the advertisement of your Honorable Body appearing in the "Engineering News" of Sept. 14, 1905, for bids for the franchise for the development of a certain water power known as "Comerio Falls," situated on the La Plata River, in the island of Porto Rico, respectfully requests the granting to it of said franchise and submits to your Honorable Body the following bid:

I.

Use of Water Power.

The use for which the water power is sought is in order to develop said water power for mechanical purposes, and to apply it to the generation of electrical energy, to be transmitted to the City of San Juan and other points and placed in the island of Porto Rico. The electric energy is then to be distributed for the purposes of light, power and heat, and for other purposes for which electricity may be used.

II.

Plans and Specifications.

Plans and specifications showing the general engineering features of the work are enclosed and made a part of this bid.

III.

Certified Check.

In accordance with said advertisement, the undersigned encloses herewith a certified check for $2,500.00, payable to the order of the Treasurer of Porto Rico as a guaranty that the franchise will be accepted if granted.

148 IV.

Annual Cash Royalty.

The undersigned will pay as an annual cash royalty to the Insular Government for the said franchise the sum of one thousand dollars ($1,000.00) per annum from and after the date of the com-

mencement of the transmission of electrical power from said "Comerio Falls," or, in lieu thereof, at the option of the Insular Government, will pay to it each year, in cash, as an annual cash royalty, an amount equal to a rebate of twenty-five per cent (25%) of the amounts paid for electric current used for light, heat or power by said Insular Government during said year to the undersigned or to its successors, or assigns, or to any company taking over its or their business, or to any company furnishing electric current to said Insular Government before the works may be completed for light, heat or power in the City of San Juan, but said cash rebate shall not exceed in any event the sum of Two thousand dollars ($2,000.00) in any one year, said cash rebate to commence to accrue six months after the granting of said franchise to the undersigned.

V.

Completion of Work.

The undersigned agrees, if this bid is accepted, that the work of installation shall be started within sixty days after the signing of the franchise by the President of the United States, and at least one-third of the total installation completed by the end of the first year, and the remainder of the work to be finished at the end of the second year.

VI.

Bond.

The undersigned agrees that a bond of not less than Ten thousand dollars ($10,000.00) in cash or approved evidences of credit, shall be deposited by it, if successful, as a guarantee of the completion of the work, and agrees that said bond shall be forfeited to the Insular Government if any of the required operations of the work are
149 not completed within the period stipulated.

VII.

Reservation by Insular Government.

The undersigned agrees that the Executive Council may reserve for the Insular Government the right to use two hundred and sixty (260) cubic feet of water per minute, to be taken from a point above the crest of the falls.

Additional Considerations.

The undersigned begs to bring to the notice of your Honorable Body the following considerations which it deems pertinent to the advisability of granting the franchise to it. The undersigned company owns certain properties in the Island of Porto Rico bordering

on the river La Plata, in and about Comerio Falls, that are necessary for the development of said water-power.

Said company further proposes to and will agree with the Insular Government, if this bid is accepted, that it will maintain a steam plant in reserve, to be ready for immediate use in case of any damage to the water-power plant or transmission lines caused by storms, cyclones or other acts of God or acts of the public enemy, or other similar causes of interruption of service, with a view to void all possibility of interruption of a good and permanent electric service to the city of San Juan.

While your Honorable Body asks for a bond of not less than Ten thousand dollars ($10,000.00), this company is willing and able to furnish, and hereby agrees to furnish, a bond of at least Twenty-five thousand dollars ($25,000.00) in lieu of said bond of $10,000.00 upon the terms specified in said advertisement.

The undersigned further begs to submit for your consideration the fact that it controls the rights which may exist under a certain franchise granting to one Ramón Valdés the right to use the waters of the Rio de la Plata, and to develop the same, which said franchise was granted by your Honorable Body on the 17th day of
150 December, 1900, and was approved by the Governor on the 18th day of December, 1900, and of which franchise the undersigned company is the assignee, by assignment of said Valdés to this company, dated June 1, 1905.

In submitting this bid to your honorable body, the undersigned company, however, reserves any and all rights which it may have or be entitled to under said last mentioned franchise, in the event this bid be not accepted.

Very respectfully,

[Seal Porto Rico Power & Light Co., Inc., 1905, Maine.]

POWER RICO POWER & LIGHT COMPANY,
By P. G. GOSSLER, *President.*
H. S. COLLETTE, *Secretary.*

New York, Oct. 26th, 1905.

Address: c/o J. G. White & Co., Inc., 43 Exchange Place, N. Y. City; or c/o Claire P. Beames, San Juan, P. R.

Office of the Executive Council of Porto Rico.

JUNE 7, 1912.

I hereby certify the foregoing to be a true and correct copy from the records of the Executive Council.

(Signed) W. R. BENNETT,
Secretary Executive Council.

$1.00 Excise Stamp.

EXHIBIT "S" FOR PLAINTIFF.

151 Filed July 13, 1912.

Ramon Valdes.

NEW YORK, *December* 13, 1906.

Sr. Don Tulio Larrinaga, Washington, D. C.

MY ESTEEMED FRIEND: After my letter of March the 9th, last past, differing for a later date to answer yours of the 5th of the same month, I had been unable to do it up to this time for various reasons, one of which was your absence and my absence from the country.

There are two things in your letter which surprise me; one is that in the Arpin matter you reserve to disclose what you know about it unless it be conditionally, and the other is that you think that you are entitled to participation in the Salto de Comerio. The first one has surprised me extremely; the second not so much because when I was in Washington, shortly before your letter which I am answering, you had already given me a hint on the subject.

Now therefore, in that regard, I believe, that if by virtue of the concession which I asked in 1898, when you were Assistant Secretary of Fomento, (now Department of the Interior) the steps for which, continued long time afterwards, it would have been carried out successfully and I had obtained some profit, out of that profit I would have given you such share as you might have been entitled to for your services.

But there is nobody more familiar than you with all the drawbacks, law suit and obstacles which presented themselves which culminated in the annulment of the concession and its being granted to another Company. In that crucial moment neither you nor any of the parties who together with me were interested, though- of asking any participation, because as it was natural, nobody though- of having such a right. All of us lost our time and our efforts, and Mr. Dexter and myself also our money.

152 Afterwards I started anew; I continued taking steps and making expenditures, all on my own and exclusive account, and after a long work, what did I get? That my petition was annulled and others which were pending, and disregarding absolutely the priority, of rights acquired, and even of my riperian rights, they advertised for bids so that all persons who so desired might submit proposals.

I again lost all my new time and my new expenditures.

At this juncture, I made a compromise whereby I included certain properties belonging to me, among which there appeared those of the Salto, in a company named the P. R. Power and Light Company, which company bid in and obtained the franchise of the Salto, for which I lent them my full cooperation. But let us suppose that I had been the successful bidder in that auction, how would it be logic that Mr. Dexter, Cosby, Sinkler and Vail, would have come

forward claiming their share on the ground that they helped me in the preliminary operations which were all lost?

In view of the above, I think that you will rectify your views but if you should still entertain any doubt, I would have no objection for the sake of our old and good friendship, which on my part I would desire to preserve, to submit the matter to two lawyers, one for each side, strangers to our families, and to abide by their decision.

Let me tell you finally, that so long as you speak in your letter of services and of interests, that so far as I am concerned, I have availed myself of all the opportunities that have arisen to reciprocate to those personal services of yours, and as to interests, I am compelled much to my regret, to remind you that whenever you needed me pecuniarily, I served you in sums amounting to $906.55 Nine hundred and six dollars fifty five cents, of which you have only reimbursed me $200.

It was never my intention to mention this, but your letter compels me to allude to the matter so that it should not pass unnoticed.

I leave on Saturday for Porto Rico, if you should need
153 anything for your family. I am as always at your orders.

Am congratulating you for your reelection, which has caused me great pleasure. I remain your truthful friend,

R. VALDES.

The above is a correct translation.

(Signed) F. FANO,
Interpreter & Translator U. S. Court.

154 EXHIBIT "A" FOR DEFENDANT.

Extract from the Minutes of the Proceedings of the Executive Council of Porto Rico, July 21, 1902.

* * * * * * *

The Committee on Franchises submitted report upon the application of Ramon Valdez for an extension of time for the completion of a plant for utilizing the Comerio Falls for the generation of electric light and power, as provided in an ordinance entitled "A Franchise granting to Ramon Valdez, his heirs and assigns, the right to use the waters of the Rio Plata and to develop the same into water power for mechanical purposes to be applied to the generation of electrical energy; also granting permission and authorizing the said Ramon Valdez, his heirs and assigns, to build, construct, erect and maintain lines of wires for transmitting and distributing electric current for the purpose of lighting, motive power and hearing" enacted by the Executive Council of Porto Rico on the 17th day of December, 1900, and approved by the Governor of Porto Rico on the 18th day of December, 1900, recommending that said extension be not granted.

The Committee also recommended that the Executive Council should not insist on the forfeiture of the bond given by the said grantee, and that the Treasurer of Porto Rico be authorized to return the same to him forthwith.

On the question "Shall the extension of time prayed for by Ramón Valdez be denied, as recommended in the foregoing report?" it was decided as follows:

In the affirmative were—

Messrs. Brioso, Elliott, Garrison, Harlan, Hartzell, Lindsay and Willoughby, 7.

In the negative were—

Messrs. Barbosa and Crosas, 2.

Absent—

155 Messrs. Benitez and Cintron, 2.

The President thereupon declared the further extension of time prayed for by the said Ramon Valdez denied.

On the question "Shall the said bond given by Ramon Valdez be returned to him by the Treasurer of Porto Rico, as recommended in the foregoing report?" it was decided as follows:

In the affirmative were:

Messrs. Barbosa, Brioso, Crosas, Elliott, Harlan, Hartzell, Lindsay and Willoughby, 8.

In the negative was:

Mr. Garrison, 1.

Absent:

Messrs. Benitez and Cintron, 2.

The President thereupon declared that the said bond should be returned by the Treasurer of Porto Rico to the said grantee, Ramon Valdez.

* * * * * * *

Office of the Executive Council of Porto Rico.

FEBRUARY 22, 1910.

I hereby certify the foregoing to be a true and correct extract from the minutes of the proceedings of the Executive Council on July 21, 1902.

(Signed) W. R. BENNETT,
Secretary Executive Council.

$1.00 Excise Stamp.
$ .50 " "

EXHIBIT "B" FOR DEFENDANT.

156 Filed July 13, 1912.

A Franchise Granting to the Porto Rico Power & Light Company, its Successors and Assigns, the Right to Develop the Water Power known as "Comerio Falls," situated on La Plata Rivera, for the Generation of Electrical Energy, and to Build, Construct, Erect and Maintain Lines of Wires for Transmitting and Distributing Electrical Energy for Commercial and Industrial Purposes.

Be it enacted and ordained by the Executive Council of Porto Rico:

SECTION 1. That the Porto Rico Power & Light Company, its successors and assigns, are hereby authorized, for the purpose of developing the water power of La Plata river at the location known as "Comerio Falls," to build a dam across the river and upon the land of the abutting owners, with all necessary rights of flowage; to lay and maintain a canal or line of pipe to convey the waters to a power station; to establish proper reservoirs for the holding and storage of the waters of said river; to regulate the flow of the water thereof above the dam; to diminish or cut off entirely the flow of water between the said dam and the place of discharge of said water in said power station, returning the water to the river after passing the power station, without contamination, and to construct, with the approval of the Commissioner of the Interior, such other works as may be necessary to generate, convert and distribute for profit the electricity as aforesaid.

SECTION 2. The route of the said transmission line shall be approximately as follows: From the water power station of
157 the La Plata river below Comerio Falls in the most direct line practicable to the town of Bayamon; thence from the town of Bayamon in the most direct line practicable to Martin Peña; thence to the city of San Juan; and thence to a distributing station; or by a direct line from Bayamon to the city of San Juan to such distributing station, with branches and distribution lines, within the municipalities of Manati, Vega Baja, Toa Alta, Barranquitas, Aibonito, Coamo, Santa Ysabel and all municipalities to the east thereof, subject always, however to the provisions of Section 4 of this franchise.

An accurate survey of the route of the transmission lines shall be submitted by the grantee, through the Commissioner of the Interior, for the approval of the Executive Council, within two months from the date of the acceptance of this ordinance by the grantee, as hereinafter provided.

SECTION 3. The said Porto Rico Power & Light Company, its successors and assigns, are hereby authorized to enter upon *the* occupy private and public lands or property for the purpose of making surveys, determining the route of the lines, or performing other necessary acts; and the said Porto Rico Power & Light Company, its successors and assigns, shall have the power to acquire by pur-

chase or under the laws of eminent domain, such private lands or easements over the same as may be necessary for the flowage and storage of the water and the development and distribution of electrical energy generated thereby, as now determined or as hereafter may be provided by law, applicable to such cases.

158 SECTION 4. All plans shall be submitted to and approved by the Commissioner of the Interior, and the material furnished and construction shall be at all times subject to the inspection of said Commissioner or his authorized agents for the purpose of securing compliance with such plans.

Said Porto Rico Power & Light Company, its successors and assigns, shall make changes in or modifications of the plans or work only after such changes and modifications have been approved by the said Commissioner of the Interior; but the construction, operation and maintenance of the system herein authorized shall not begin until the approval of the Commissioner of the Interior is first obtained. And if any part of such system shall thereafter become an obstruction or injury to the public interests, in the opinion of the Commissioner of the Interior, he may, with the approval of the Executive Council and upon reasonable notice to the grantee, direct the alteration or removal of the part of said system so obstructing or injuring the public interests.

SECTION 5. The work of installation shall be begun within ninety days after the signing of this franchise by the Governor of Porto Rico, and the work shall be finished and the system in operation between the power house at Comerio Falls and San Juan within two years from the date of the acceptance of this franchise by the grantee.

SECTION 6. This franchise shall be accepted in writing filed with the Executive Council within thirty days after the signing thereof by the Governor of Porto Rico, and upon said acceptance

159 the Porto Rico Power & Light Company, its successors or assigns, shall deposit with the Treasurer of Porto Rico fifteen thousand ($15,000) dollars in cash or approved evidences of credit as a guarantee of the completion of the work, and said deposit is hereby stipulated to be liquidated damages which shall accrue to and become the property of the People of Porto Rico, without the necessity of judicial proceedings, if the required work is not completed within the period herein provided.

Upon the presentation to the Treasurer of Porto Rico of a certificate from the Commissioner of the Interior certifying to the completion of said work, as provided in section 5 of this ordinance, within the period herein stipulated, or before, the said Treasurer is authorized and directed to return to said Porto Rico Power & Light Company, its successors or assigns, the security above mentioned.

SECTION 7. The said Porto Rico Power & Light Company, its successors or assigns, agree to supply the electric current at reduced rates of tariff, which shall never exceed the following maximum schedule:

For lighting; in the municipality of San Juan, 10¢ per K. W. H. In placed outside of the municipality of San Juan, 15¢ per K. W. H.

For power:

Up to 10 H. P.	10 c. K. W. H.	
11 to 20 H. P.	10%	discount.
160 21 to 40 H. P.	15%	discount.
41 to 100 H. P.	20%	"
101 and over	25%	"

SECTION 8. The system hereby authorized shall be deemed to be a public service system, and such service shall be furnished to the public on demand on equal terms to all without discrimination, and its charges and service shall be at all times subject to effective regulation by the Government through the Executive Council.

SECTION 9. The right is reserved to the Insular Government of Porto Rico to 260 cubit feet of water per minute from said La Plata river, to be taken from any point above the dam.

SECTION 10. The Porto Rico Power & Light Company, its successors and assigns, shall keep in reserve a steam plant, with capacity sufficient at all times to properly light the streets of the municipality of San Juan. Said steam plant shall be open to inspection by the Commissioner of the Interior at all times, and he shall have the right from time to time to require the grantee to test the same to see that the provisions of this section are complied with.

SECTION 11. In the event that said Porto Rico Power & Light Company shall assign this franchise to any company, corporation, individual or individuals, said company, corporation, individual or individuals shall, by such assignment, succeed to and acquire all the rights, liberties, privileges, power and authority herein conferred upon the said Porto Rico Power & Light Company, and shall
161 also be obligated to all the terms and conditions herein stipulated.

SECTION 12. In accordance with section 3 of the Joint Resolution of Congress, approved May 1, 1900, the franchise herein granted shall be subject to amendment, alteration or repeal; no stock or bonds shall be issued except in exchange for actual cash or property at a fair valuation, equal in amount to the par value of the stock or bonds issued; no stock or bond dividends shall be issued; the property constructed and acquired hereunder may be purchased or taken by the public authorities at a fair and reasonable valuation, and the Executive Council shall regulate the charges and conditions of service hereunder.

SECTION 14. This franchise is granted for the period of ninety-nine (99) years from the date of its approval by the Governor of Porto Rico.

SECTION 15. The granting of this franchise by the Executive Council of Porto Rico shall not be deemed in any sense a recognition of any right or claim made by Ramón Valdés, or any company or corporation to any previous grant or concession of the water power of Comerio Falls.

Done in open session of the Executive Council of Porto Rico, this fourth day of January A. D. 1906.

(Signed) ANDRÉS CROSAS,
President pro Tem of the Executive Council.

Approved this eighth day of January A. D. 1906.

(Signed) BEEKMAN WINTHROP,
Governor of Porto Rico.

One $3.00 Excise Stamp.
Four 10 " "

162 The People of Porto Rico.

Office of the Secretary.

I, George Cabot Ward, Secretary of Porto Rico, do hereby certify that the foregoing six printed pages are a true copy of an ordinance entitled "A Franchise granting to the Porto Rico Power & Light Company, its successors and assigns, the right to develop the water power known as "Comerio Falls," situated on La Plata River, for the generation of electrical energy, and to build, construct, erect and maintain lines of wires for transmitting and distributing electrical energy for commercial and industrial purposes," as the said ordinance appears upon the official record in my custody of the proceedings of the Executive Council of Porto Rico at a meeting held on the 4th day of January, A. D. 1906. I further certify that the said ordinance was duly approved by the Governor of Porto Rico on the 8th day of January, A. D. 1906, as appears by the official records in this office.

In witness whereof, I have hereunto set my hand and the Great Seal of Porto Rico, at the Capital, on this 23rd day of February in the year of our Lord nineteen hundred and ten, and of the Independence of the United States the one hundred and thirty fourth.

[SEAL.] (Signed) GEORGE CABOT WARD,
Secretary of Porto Rico.

$1.00 Excise Stamp.

EXHIBIT "C" FOR DEFENDANT.

163 Filed July 13, 1912.

(Translation.)

In the City, County and State of New York, United States of America, on the first day of June one thousand nine hundred and five, before me, Martin Travieso, Jr., a Notary Public of this City and County and in the presence of the Interpreter and witnesses hereinafter mentioned and who will sign, appeared Mr. Romón Valdés y Cobián, of full age, married, property owner and resident of this City, party of the first part, and on the other part, Messrs.

Walter L. Worrall and Frederic K. Seward, both of full age, married, lawyers and residents of this City, as President and Secretary, respectively, of the "Porto Rico Power and Light Company," a corporation duly organized and existing under the Laws of the State of Maine, United States of America, as appears from the certificate of incorporation dated January 30th, 1905, exhibited to me by the parties hereto, together with the Minute Book of the said corporation, from which it appears that the said parties were elected respectively President and Secretary at the meeting held by the Board of Directors of the said corporation, on the 9th day of February of the current year.

I certify that the parties hereto are all personally known to me, and that, in my judgment, they have necessary legal capacity for the execution of this instrument.

I further certify that Messrs. Worrall and Seward are specially authorized to execute and accept this instrument in the name and on behalf of the "Porto Rico Power Light Company" by a resolution passed by the Board of Directors of the said corporation, at a me-ting held on the 31st day of May, 1905. The said
164 resolution literally translated from English into Spanish, says:

"Whereas, this Company has been organized for the purpose among others of carrying on the business of electric light, heat and motive power in the Island of Porto Rico; therefore, be it,

Resolved, that the President and Secretary of this Company be, and they are hereby authorized, empowered and instructed to execute, accept and receive in the name of this Company all the documents of transfer and other instruments that may be necessary and convenient for the purpose of acquiring for this Company, under the conditions that they may deem convenient to the interests of the same, the properties, easements, franchises and concessions that this Company may need for the development of that business in the Island of Porto Rico, and to seal the said documents and other instruments with the seal of the corporation."

I certify that the foregoing is a correct translation of its original, which I have before me.

And whereas the said Messrs. Worrall and Seward are not acquainted with the Spanish Language, therefore there appears with them as interpreter Mr. José A. Carás, of full age, unmarried, and legally and intellectually capable of acting as such interpreter.

Mr. Valdés y Cobián says:

First. That he is the owner of the following rural properties, situated in the Island of Porto Rico:

(Here follows the description of the three parcels of land.)

Second. That he is also the owner of the following rights:

The easements and concessions to construct the works that he may deem necessary, without any limitations, and for an indefinite time, in the properties on the banks of the Rio de la Plata, belonging to Don Pedro del Valle y Franco and Don Juan Dionisio Morales, for the utilization of the waters of the said river, as it more fully appears from the instruments executed by the said Don Pedro

165 del Valle y Franco and Don Juan Dionisio Morales, before the Notary of the town of Bayamón Don Tomás Valdejuli y Calatraveño, on the 6th day of October, 1898.

Third. That he acquired the said properties and rights above described, by purchase from the Rio Plata Electric Company by a deed executed before the Notary of the City of San Juan, Don Santiago R. Palmer, on the 27th day of February, 1903, inscribed as to the parcels described under numbers 1 and 2 at folios 166 and 241 of Volumes 9 and 10 of Comerio, properties numbers 443 and 508, inscriptions 6th and 3rd, respectively.

Fourth. That having agreed to grant, sell and transfer to the said "Porto Rico Power and Light Company," the properties and rights hereinbefore described, he hereby grants, sells and transfers to the "Porto Rico Power and Light Company," the said three parcels of land and the rights above described, without any reservation, for the price of $131,000.00, represented by $28,000 in mortgage bonds of the "Porto Rico Power and Light Company, and $103,000 in full paid stock of the said company. The said bonds and stock shall be deposited for the purpose of being delivered to Mr. Valdes as soon as the "Porto Rico Power and Light Company shall have obtained a valid title over the properties, rights and concessions sold and shall be in possession of the franchise or concession on which Mr. Valdes has made application for the Executive Council of Porto Rico, according to the stipulations of paragraph II of contract executed on the 14th day of January of this year, which contract I have before me.

Fifth. The vendor Mr. Valdes declares that there are no liens or encumbrances of any kind over the said properties and rights, and that he has a perfect right to sell them.

Sixth. The vendor Mr. Valdes obligates himself to warrant and defend the title in accordance with law, of which effects he has full notice.

166 Seventh. Messrs. Worrall and Seward, in behalf of the Porto Rico Power and Light Company, declare, that they accept this document in all its parts, and they received at this moment the title deeds to the said premises, to which I certify.

Eighth. The parties hereto do hereby reserve in favor of the Insular and Municipal Treasuries the preferred legal mortgage, which they have in preference to any other creditor, for the collection of the last annuity of taxes asses- and not paid over the said properties sold.

I, the Notary, notified the parties, as follows:

That this deed must be recorded in the Registry of Property of Caguas, Island of Porto Rico, because it shall be effective against third parties only from the date of its registration, nor shall it be admissible, unless so recorded, before any Court, Board or Office-s of the Government, except in the cases specified by Article 89 of the mortgage Law in force in Porto Rico.

I read this instrument to the parties and witnesses, after advising them of the right they have to read it by themselves, the interpreter Mr. Carás translating it literally into English for Messrs.

Worrall and Seward, and being acquainted with the contents hereof they say that the- ratify it in all its parts and sign with the interpreter and with the attesting witnesses Mr. Harold C. Vaughan and Mr. Maurice Cowen, both of full age, residents of this City, legally capable and personally known to me, to all of which I certify. (Signed) R. Valdés—Walter L. Worrall—Frederic K. Seward—Seal of the Porto Rico Power and Light Company—Interpreter—José A. Carás—Witnesses—Harold C. Vaughan—Maurice Cowen—Before me—Martin Travieso, Jr., Notary Public (78) New York County. Notarial Seal.

167 EXHIBIT "D" FOR DEFENDANT.—NOT ADMITTED. $573.

(*Translation.*)

PUERTO RICO, *September* 23, 1899.

Sr. Don Ramon Valdes.

MY ESTEEMED FRIEND: After my arrival here I wrote you; and although there has come mail from there I have received no reply thereto from you. You must have been informed already by Dexter, of the decision of the Audiencia (Supreme Court) in the Arpin-Noble matter. It is indispensable to start forthwith condemnation proceedings so as to have time to carry them through before we get to actual work on the ground; and mainly to show to that people that there is no obstacle in carrying out the works, without (any difficulty) Write me at once so as to do without delay what may be proper. I inform you that Bishop Blenk, is not strange to the success obtained that day with the Secretary. I was that morning waiting for an opportunity to speak with the Secretary when the Bishop came in. We started to talk about Porto Rico, and among other reasons which I gave him to justify the discouragement which was getting hold of the Porto Ricans, as a very important one, I told him, it was the absolute paralization of the administrative process of the country. The Bishop spoke in the most energetic terms, and I am almost sure that he touched this point to the secretary as he had promised me to do it. I did not deem advisable to see Root immediately, and departed having in mind return at two o'clock in the afternoon. When I called upon him in the afternoon, with the pretext of saying good bye to him, I spoke about the discouragement which was beginning to manifest itself, on account of the paralization of all the activities, which now became aggravated by the lack of all classes of works, as even the private works were paralized, because the experience under gone by you, being considered as one of the most energetic promoters, had disappointed everybody by the result obtained. It was then that he told me that he was willing to grant you a revocable license. The effect produced on me
168 was as if he was remembering what the bishop had said to him during the morning. If you need anybody in Washington to help you be it known that Blenk is one of the best disposed towards us.

Write me and keep me posted, and order your affectionate friend.

T. LARRINAGA.

The above is a correct translation.

(Signed) F. FANO,

Interpreter & Translator U. S. Court.

EXHIBIT "E" FOR DEFENDANT.

169 Filed July 13, 1912.

[ENGINEER'S SEAL.]

Received from Mr. Ramon Valdés the sum of two hundred and fifty dollar- in payment of topographical work, plans and on the Plata River falls at Comerio as agreed with Mr. Sinkler.

($250 a. m.)

San Juan, Puerto Rico D'ber 1rst—99

(Signed) T. LARRINAGA.

170 In the District Court of the United States for Porto Rico.

(*Journal Entry, June* 10, 1912.)

Equity, #573.

TULIO LARRINAGA
vs.
RAMON VALDES.

The trial of the above entitled cause is continued as on Friday, June 7th, 1912. Whereupon Martin Travieso, Jr., attorney for the defendant presents a motion to the Court for the dismissal of this cause, which said motion after being duly heard is held in abeyance for further consideration, and then and there, the trial of this cause is postponed until Tuesday, June 11th, 1912, at 9 o'clock A. M.

(*Journal Entry of June* 11, 1912.)

The trial of the above entitled cause is continued as on yesterday, The motion to dismiss the Bill of Complaint, which was held in abeyance by the Court for further consideration, is now overruled according to law, to which ruling the defendant duly objects and excepts. All the evidence on behalf of the defendant is concluded and the hour of adjournment having arrived, the trial of this cause is postponed until Thursday, June 13, 1912, at 3 o'clock P. M.

171 In the District Court of the United States for Porto Rico.

Equity, # 573.

TULIO LARRINAGA
vs.
RAMON VALDES.

(*Journal Entry of June* 29, 1912.)

Upon motion of Martin Travieso, Jr., attorney for the defendant herein, the amount of the Appeal Bond is fixed in the sum of Twenty-Thousand Dollars ($20,000.00).

172 In the District Court of the United States for Porto Rico.

No. 573, Equity.

TULIO LARRINAGA
vs.
RAMON VALDES.

The Court heretofore, upon the 1st day of July, 1912, after full hearing and argument, rendered judgment in favor of the complainant, and against the respondent, for the full amount asked, to wit, the amount of ten per cent of that which the respondent received for a sale of the concession and interest which were the subject of the letter contract between them, and the final determination, as to amount, was held open for an ascertainment of the real value of the consideration which the respondent took for his transfer, and in the hope of being aided in arriving at some definite value, the Court requested F. W. Teale, in local charge of the affairs of the companies, whose securities the respondent took in payment, to prepare and transmit to the Court, as a part of his evidence, such information with relation to capitalization and value as was available to him within the island of Porto Rico. The statement so made and transmitted, however, has been of no assistance to the Court in arriving at any valuation of the securities which the respondent took, and it therefore rests within the responsibility of the Court to fix what that amount should be.

It appears from the evidence, and was admitted, that upon the date of the deed from Valdes to the Power & Light Com-
173 pany, which date was June 1, 1905, he received in bonds and stock of the Power & Light Company the sum of $131,000.00, and, in the absence of any definite means of ascertainment, and in the absence of any evidence whatever, offered by either party, which would show that at the time of said transfer, the securities were worth less or more than par, the judgment of the Court is that the complainant Larrinaga shall have and recover from the defendant

Ramon Valdes ten per cent of the par value of said stock and bonds, to wit, the sum of $13,100.00, with interest thereon at the rate of six per cent per annum from the date of said transfer, viz. June 1, 1905. Let judgment be so entered.

—— ——, *Judge.*

A True Copy.
ARTHUR J. HARVEY,
Court Reporter.

174 In the District Court of the United States for Porto Rico.

Equity, No. 573.

TULIO LARRINAGA, Complainant,
vs.
RAMON VALDES, Respondent.

Decree on Accounting.

Filed July 2, 1912.

Pursuant to the final decree in this cause signed by the Court and entered under date of the 2nd day of July, 1912, and an accounting having been had before the Judge of this Court, acting as Referee, and testimony having been taken, it is hereby, ordered, adjudged and decreed that the plaintiff herein have and recover of respondent the sum of $13,000.00 with interest at 6% thereon from the 1st day of June, 1905, together with the costs of this action.

Dated at San Juan, Porto Rico, this 2nd day of Jan. 1912.

(Signed) PAUL CHARLTON,
District Judge.

175 In the District Court of the United States for Porto Rico.

Equity, No. 573.

TULIO LARRINAGA, Complainant,
vs.
RAMON VALDES, Respondent.

Final Decree.

Filed July 2, 1912.

This cause coming on to be heard on the 7th day of June, 1912, and having been heard on that day, and the trial having been carried over and continued on the 10th and 11th days of June, 1912, and both parties having appeared by their attorneys of record, and having submitted their evidence, and the same having been duly heard and weighed by the Court, and the Court being duly advised

in the premises; now therefore, it is ordered, adjudged and decreed that the complainant has sustained the material allegations of his bill of complaint, and on the law and facts is entitled to a decree against the respondent herein for the relief prayed for in the complaint, and accordingly it is; further ordered, adjudged and decreed that the complainant have and recover from the respondent the sums of money or property to which he is entitled under the contract sued on and proven in evidence, and that an accounting
he had for the purpose of settling the amount which re-
176 spondent shall pay to complainant, and that upon said accounting, this respondent shall pay, and is hereby ordered to pay to the complainant such amount as shall appear to be justly due on said accounting, together with interest thereon and the costs of this action.

Dated at San Juan, Porto Rico, this 2d day of July, 1912.

(Signed) PAUL CHARLTON,
District Judge.

177 Filed July 29, 1912.

In the District Court of the United States for Porto Rico.

No. 573. Equity.

TULIO LARRINAGA, Complainant,
vs.
RAMON VALDES, Respondent.

Petition for Appeal & Supersedeas.

To the Honorable Paul Charlton, Judge of the above Court:

Ramon Valdes, the defendant in the above entitled suit, feeling himself aggrieved by the decree made and entered in this cause on the second day of July, A. D., 1912, does hereby appeal from the said decree to the Honorable the Supreme Court of the United States, for the reasons specified in the assignment of errors, which is filed herewith, and he prays that his appeal be allowed and that citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the Supreme Court of the United States.

And desiring to supersede the execution of the said decree, the appellant further prays that an order be made fixing the amount of security which the said appellant shall give and furnish upon such appeal, and that upon the giving of such security all further proceedings in this Court be suspended and stayed until the determination of the said appeal by the Supreme Court of the United States. And your petitioner will ever pray, etc.

(Signed) MARTIN TRAVIESO, JR.,
Solicitor for Appellant Ramon Valdes.

178 Filed July 29, 1912.

In the District Court of the United States for Porto Rico.

Equity. No. 573.

TULIO LARRINAGA, Complainant,
vs.
RAMÓN VALDÉS, Defendant.

Assignment of Errors.

Now comes Ramón Valdés, Defendant and Appellant in the above entitled cause, and files the following assignment of errors upon which he will rely in the prosecution of his appeal from the decree made and entered by this Honorable Court on the second day of July, A. D. 1912.

I.

That the District Court of the United States for the District of Porto Rico erred in overruling the demurrer to the bill of complaint, founded upon the ground that the complainant in this cause has a full, adequate and complete remedy at law.

II.

That the said Court erred in denying the motion to dismiss the case, made after the reading of the bill of complaint, which motion was founded upon the ground that the complainant had a full, ad-quate and complete remedy at law, for the recovery of the amount claimed in this suit.

III.

That the said Court erred in admitting in evidence a certified copy of the petition made by the Porto Rico Power & Light Company to the Executive Council of Porto Rico, under date of October 26th, 1905, whereby the said Company applied for a new franchise. The material part of said petition, offered in evidence reads as follows:

179 "The undersigned further begs to submit for your consideration the fact that it controls the rights which may exist under a certain franchise granting to one Ramón Valdés the right to use the waters of the Rio de la Plata, and to develop the same, which said franchise was granted by your Honorable Body on the 17th day of December, 1900 and approved by the Governor on the 18th day of December 1900, and of which franchise the undersigned Company is the assignee, by assignment of said Valdés to this Company, dated June 1, 1905."

Objection was made to the admission of the said petition in evidence, for the reason that the statement therein contained had not been made by the defendant Ramón Valdés, and therefore could not be binding upon him.

IV.

That the Court erred in sustaining the objection of counsel for the complainant, to the question asked by counsel for the defendant, upon the cross-examination of the said complainant. The question was to the effect whether the complainant had had anything to do with an application made by the defendant to the Spanish Government. The objection was sustained upon the ground that the question was immaterial, because the testimony, in the opinion of the Court, shows that the complainant had no official position with any Government which had authority to grant a franchise in Porto Rico. An exception was taken to such ruling.

V.

That the said Court erred in denying defendant's motion to dismiss the bill of complaint, founded upon the ground that the evidence does not show that there was an actual sale by the defendant Valdés to the Porto Rico Power & Light Company of any franchise or concession granted by the Executive Council of Porto Rico.

VI.

That the Court erred in denying the motion made by the defendant at the close of complainant's case to dismiss the bill upon the ground that there was no evidence as to the amount, if any,
180 received by the defendant Valdés from the Porto Rico Power & Light Company as a consideration for the alleged transfer of a franchise, so as to enable the Court to render its judgment, nor as to the value of the said franchise said to have been transferred by the said defendant.

VII.

That the Court erred in overruling the defendant's motion made at the close of the complainant's case, for the dismissal of the bill, upon the grounds that neither the allegations of the bill itself, nor the evidence introduced by the complainant, have made out a case entitling the complainant to relief in a Court of Equity and that the complainant could have obtained relief, if he is entitled to any, in a court of law, where he would have a full, adequate and complete remedy.

VIII.

That the Court erred in denying complainant's motion to dismiss the bill, made upon the ground that the contract upon which the suit is brought is, from the showing of the bill and the evidence of the complainant, illegal and against public policy, and as such, null and void, because it provides for a contingent compensation for acting as agent in securing a franchise from the government, the contingency being the success of the agent in securing the franchise.

IX.

That the Court erred in refusing to admit in evidence an official communication addressed by the complainant, in his capacity as Under-Secretary of the Interior of Porto Rico, by which communication he forwards to the head of the Department the application of the defendant Ramón Valdés, for the utilization of the waters at the Comerío Falls, said communication being dated on the 4th day of October, 1898. The Court rejected the said communication upon the ground that the agreement between the parties was dated
181 October 30 and 31st, 1898, a date subsequent to the date of said communication, and that according to the testimony of the complainant the verbal agreement was made on the 29th of October, 1898. An exception was taken to such ruling.

X.

That the Court erred in refusing to admit in evidence the bill of complaint, which was offered by the defendant for the purpose of impeaching the testimony of the complainant, by showing, that according to the allegations of the said bill of complaint, the verbal agreement or compact between the complainant and the defendant was made on a date prior to the month of October, 1898, while the complainant in his testimony stated that the verbal agreement had been made during the month of October, one or two days before the date of the letter written by the defendant to the complainant. The evidence was rejected as being immaterial and subject to be stricken out. An exception was taken to such ruling.

XI.

That the Court erred in not allowing the witness Francisco Gutierrez to answer the following question, made by the attorney for the defendant:

"Can you state from looking at the expediente (Personal record No. 18), on what date it appears that Mr. Tulio Larrinaga was appointed Sub-Secretary of the Department of the Interior."

"The purpose of the question was to show that at the time when the verbal agreement between the complainant and the defendant was made, the former was holding the position of sub-Secretary of the Interior of Porto Rico.

The evidence was rejected as being immaterial, to which ruling the defendant duly excepted.

XII.

That the Court erred in refusing to admit in evidence a letter written by the complainant to the defendant (Exhibit "D"
182 for Defendant, not admitted), which was offered for the purpose of showing the nature of the services that were performed by the complainant, besides the professional services rendered in connection with the franchise.

The letter so offered and rejected as immaterial, reads as follows:

Sr. Don Ramon Valdes.

My Esteemed Friend: After my arrival here I wrote you; and although there has come mail from there I have received no reply thereto from you. You must have been informed already by Dexter, of the decision of the Audiencia (Supreme Court) in the Aprin-Noble matter. It is indispensable to start forthwith condemnation proceedings so as to have time to carry them through before we get to actual work on the ground; and mainly to show to that people that there is no obstacle in carrying out the works, without (any difficulty). Write me at once so as to do without delay what may be proper. I inform you that Bishop Blenk, is not strange to the success obtained that day with the Secretary. I was that morning waiting for an opportunity to speak with the Secretary when the Bishop came in. We started to talk about Porto Rico, and among other reasons which I gave him to justify the discouragement which was getting hold of the Porto Ricans, as a very important one, I told him, it was the absolute paralization of the administrative process of the country. The Bishop spoke in the most energetic terms, and I am almost sure that he touched this point to the secretary as he had promised me to do it? I did not deem advisable to see Root immediately, and departed having in mind to return at two o'clock in the afternoon. When I called upon him in the afternoon, with the pretext of saying good bye to him, I spoke about the discouragement which was beginning to manifest itself, on account of the paralization of all the activities, which now became aggravated by the lack of all classes of works, as even the private works were paralized, because the experience undergone by you, being considered as one of the most energetic promoters, had disappointed everybody by the result obtained.—It was then that he told me that he was willing to grant you a revocable license. The effect produced on me was as if he was remembering what the Bishop had said to him during the morning. If you need anybody in Washington to help you be it known that Blenk is one of the best disposed towards us.

Write me and keep me posted, and order your affectionate friend.

(Signed) T. LARRINAGA."

XIII.

That the Court erred in holding that the contract upon which this suit was brought is not against public policy and is in force, and that the complainant is entitled to recover.

XIV.

That the Court erred in admitting the testimony of Mr. Teele as to the value of the properties sold by the defendant to the
183 Porto Rico Power & Light Company, after the case had been submitted to the Court and decided.—An exception was taken to the admission of such evidence after the case had been closed.

XV.

That the Court erred in holding that by the deed of June 1st, 1905, the defendant conveyed the franchise in which the complainant claims an interest, to the Porto Rico Power & Light Company, when the deed shows very clearly that by the said deed the defendant conveyed to the said Company several parcels of lands and certain easements in which the complainant had no interest whatsoever.

XVI.

That the decree of the Court in favor of the complainant is erroneous, in that it is against the evidence introduced by the defense and admitted by the complainant, to the effect that the franchise upon which the complainant claims an interest was declared forfeited by the Executive Council of Porto Rico.

XVII.

That the decree of the Court is erroneous in that it provides that the complainant shall have and recover from the defendant ten per cent of the total price received by the defendant from Porto Rico Light & Power Company, under the deed of June 1st, 1905, which refers to lands and easements upon which the complainant had no interest, under his contract with the defendant.

XVIII.

That the decree of the Court is erroneous in that without any evidence offered by either side to prove the value of the franchise claimed to have been sold by the defendant, and in the absence of any definite means of ascertainment, it arbitrarily holds that the complainant is entitled to recover from the defendant the sum of $13,000.00, that is ten per cent of the price received by the
184 defendant under the deed of June 1st, 1905, without making any deduction of the value of the other properties conveyed by the said deed, and in which the complainant had no interest.

And in order that the foregoing assignment of errors may be and appear of record, the appellant Ramón Valdés presents the same to this Court and prays that such disposition be made thereof as in accordance with law and the Statutes of the United States in such cases made and provided.

All of which is most respectfully submitted.

(Signed) MARTIN TRAVIESO, JR.,
Solicitor for Appellant, Ramon Valdés.

185 In the District Court of the United States for Porto Rico.

Equity, #537.

TULIO LARRINAGA
vs.
RAMON VALDES.

(Journal Entry—Order Allowing Appeal.)

July 29, 1912.

Now, on this day comes Martin Travieso, Jr., Solicitor for the defendant, Ramon Valdes, the plaintiff herein being represented by his attorney, Louis Banigan, and presents to the Court a petition for an appeal and supersedeas, and then and there presents to the Court the Assignment of Errors, whereupon the Court allows said appeal and orders the petition and assignment of errors to be filed herein.

186 In the District Court of the United States for Porto Rico.

No. 573. Equity.

TULIO LARRINAGA, Complainant,
vs.
RAMÓN VALDÉS, Defendant.

Citation on Appeal.

The United States of America to Tulio Larrinaga, Complainant and Respondent, Greeting:

You are hereby notified that in a certain case in equity in the United States District Court for the District of Porto Rico, wherein Tulio Larrinaga is complainant and Ramón Valdés is defendant, an appeal has been allowed the defendant therein to the Supreme Court of the United States.

You are hereby cited and admonished to be and appear in said Court at the City of Washington, in the District of Columbia, within thirty days after the date of this citation, to show cause, if any there be, why the order and decree appealed from should not be corrected and speedy justice done the parties in that behalf.

Witness the Honorable Judge of the United States District Court for the District of Porto Rico, this 29th day of July, A. D. 1912.

PAUL CHARLTON,
Judge United States District Court for Porto Rico.

Service of the above citation is hereby accepted, this 29th day of July, A. D., 1912.

ROUNDS, HATCH DILLINGHAM & DELEVOISE.
EDWARD S. PAINE.

187 In the District Court of the United States for Porto Rico.

Equity. No. 573.

TULIO LARRINAGA, Complainant,
vs.
RAMÓN VALDÉS, Defendant.

Bond on Appeal to the Supreme Court.

Know all men by these presents, that we, Ramón Valdés, as principal and Gabriel Guerra and Antonio Alvarez Nava, as sureties, are held and firmly bound unto Tulio Larrinaga, appellee in the above cause, in the Sum of Twenty Thousand dollars, conditioned that, Whereas, on the second day of July, A. D. 1912, in the District Court of the United States for the District of Porto Rico, in a suit depending in that Court, wherein Tulio Larrinaga was complainant and Ramón Valdés was defendant, numbered on the equity docket as 573, a decree was rendered against the said Ramón Valdés and the said Ramón Valdés having obtained an appeal to the Supreme Court of the United States, and filed a copy thereof in the office of the Clerk of the said Court to reverse the said decree, and a citation directed to the said Tulio Larrinaga citing and admonishing him to be and appear at a session of the Supreme Court of the United States, to be holden in the City of Washington, District of Columbia, on the — day of ——, A. D. 19— next.

Now, if the said Ramón Valdés shall prosecute his appeal to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain
188 in full force and virtue.

(Signed) RAMON VALDÉS,
By MARTIN TRAVIESO, JR.,
His Solicitor, Principal. [SEAL.]

(Signed) GABRIEL GUERRA. [SEAL.]
(Signed) ANTONIO ALVAREZ NAVA. [SEAL.]

Sealed and delivered in the presence of—

(Signed) R. VALDÉS, JR.
(Signed) CELESTINO IRIARTO, JR.

UNITED STATES OF AMERICA,
District of Porto Rico, ss:

I, Gabriel Guerra, resident of Porto Rico, do solem-ly swear, that after paying my just debts and liabilities I am worth more than twenty thousand dollars, in real estate within the jurisdiction of this Court, and subject to execution, levy and sale.

[SEAL.] (Signed) GABRIEL GUERRA.

Sworn and subscribed before me this 29th day of July, 1912.
(Signed) JOSE C. MARTINEZ,
Notary Public.

(25¢ Excise Stamp.)

UNITED STATES OF AMERICA,
District of Porto Rico, ss:

I, Antonio Alvarez Nava, resident of Porto Rico, do solem-ly swear, that after paying my just debts and liabilities I am worth more than twenty thousand dollars, in real estate within the jurisdiction of this Court and subject to execution, levy and sale.
(Signed) ANTONIO ALVAREZ NAVA.

Sworn and subscribed before me this 29th day of July, 1912.
(Signed) JOSE C. MARTINEZ,
[SEAL.] *Notary Public.*

(25¢ Excise Stamp.)

The within bond is hereby approved, subject to the ratification thereof, by the appellant Ramón Valdés, within the term of sixty days from this date. San Juan, P. R., July 29th, 1912.
(Signed) PAUL CHARLTON, *Judge.*

189 In the District Court of the United States for Porto Rico.

Equity. #573.

TULIO LARRINAGA
vs.
RAMON VALDES.

(Journal Entry, Order Approving Bond.)

July 29, 1912.

Now comes Martin Travieso, Jr., attorney for the defendant herein and presents to the Court a bond on appeal for the sum of Twenty Thousand Dollars ($20,000.00), which said bond after being duly considered by the Court is approved according to law.

190 Filed August 16, 1912.

In the United States District Court for Porto Rico, at San Juan.

In Equity. No. 573.

TULIO LARRINAGA, Complainant,
versus
RAMÓN VALDÉS, Defendant.

Ratification of Bond on Appeal.

Know all men by these presents, That I, Ramón Valdés, resident of San Juan, Island of Porto Rico, and temporarily residing in

the City of New York, the defendant in the above entitled suit, have ratified and fully approved, and by these presents do ratify and fully approve, the action of Martin Travieso, Jr., my Solicitor and Counsel in the above suit, in signing for my self and in my behalf a certain bond on appeal, for the sum of Twenty Thousand dollars, wherein Messrs. Gabriel Guerra and Antonio Alvarez Nava are sureties, and which bond has been filed for the purpose of superseding the execution of the judgment rendered against me in the above suit; and I hereby ratify and confirm the said bond, as principal thereto, and wish that the said bond shall have the same force and effect, as if it had been signed, sealed and delivered by me, personally, on the date it bears.

(Signed) RAMON VALDES.

191 STATE OF NEW YORK,
City of New York, ss:

On this 10th day of August, 1912, before me, the undersigned Notary Public, personally appeared Ramón Valdés, the person described in and who executed the foregoing instrument of ratification, he *been* personally known to me, and he acknowledged to me that he executed the foregoing instrument, as his free act and deed and for the purposes therein expressed.

[NOTARY'S SEAL.] (Signed) JOSEPH A. FLYNN,
Notary Public, Notary Public, *Queens County.*

Certificate filed in New York County, County Clerk's office No. 64; Register's Office No. 4162.

192 In the District Court of the United States for Porto Rico.

#573. Equity.

TULIO LARRINAGA
vs.
RAMON VALDES.

I, Rafael Guillermety, Clerk of the District Court of the United States for Porto Rico, do hereby certify that the foregoing typewritten pages numbered 1 to 191, inclusive, to be a true and correct copy of certain proceedings in the above entitled cause, as called for by the præcipe filed by the counsel for the appellant, copy of which præcipe is hereto attached, excepting the Stenographer's notes taken at the trial and Statements made by the Court and taken by the Stenographer on June 29th, 1912.

In testimony whereof, I have hereunto set my hand and affixed the Seal of said Court this 20th day of August, A. D. 1912.

[Seal United States District Court for the District of Porto Rico.]

RAFAEL GUILLERMETY,
Clerk Dist. Court U. S. for P. R.

Endorsed on cover: File No. 23,353. Porto Rico D. C. U. S. Term No. 343. Ramon Valdes, appellant, vs. Tulio Larrinaga. Filed September 10, 1912. File No. 23,353.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1913.
No. 348.

RAMON VALDES,
Appellant.

v.

TULIO LARRINAGA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

BRIEF FOR APPELLANT.

F. KINGSBURY CURTIS,
HUGO KOHLMANN,
MARTIN TRAVIESO, Jr.,
Counsel for Appellant.

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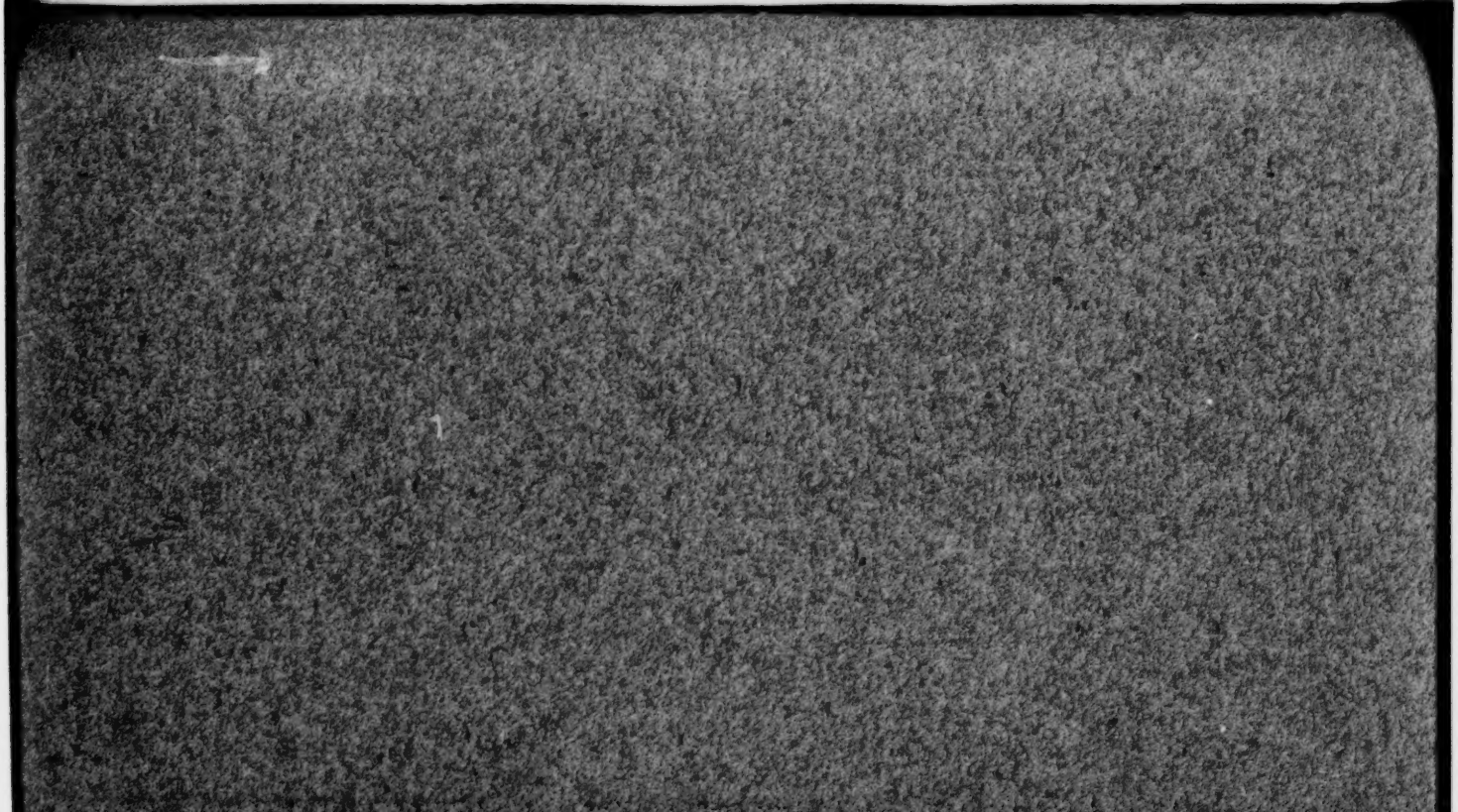

SUBJECT INDEX.

ALPHABETICAL LIST OF CASES CITED.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1913.

No. 343.

RAMON VALDES,
Appellant,

v.

TULIO LARRINAGA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

BRIEF FOR APPELLANT.

Preliminary Statement.

This is an appeal from a decree of the District Court of the United States for Porto Rico, dated July 2, 1912, in favor of the complainant below.

The suit was a suit in equity, brought by the appellee, Tulio Larrinaga against Ramon Valdes to recover compensation for services alleged to have been rendered by the former to the latter in connection with the securing of a certain franchise or concession, which compensation according to an alleged agreement between the parties was to consist of 10 per cent. of any amount realized by Valdes from such franchise or concession.

Valdes interposed a demurrer to the bill on the ground that it appeared therefrom that complainant had a plain, adequate and complete remedy at law (Record, p. 11). This demurrer was, however, overruled by the Court below (Record, p. 12) and after Valdes had filed his answer (Record, pp. 13-19) a trial took place before the District Judge, resulting in the decree of July 2, 1912, that complainant recover from Valdes the sum of $13,000. with interest at 6 per cent. from June 1, 1905 (Record, p. 94).

The present appeal from this decree is taken under Section 244 of the Judicial Code of March 3, 1911, 36 Stat., 1087, 1157 and like an appeal from a United States district court, brings up the evidence at large. Hence a transcript of the testimony below appears on pages 21 to 58 of the printed record, followed on pages 59 to 92 by copies of the various exhibits.

Ramon Valdes died on October 27, 1913, during the pendency of this appeal. His death was suggested in this Court on February 24, 1914, and his son, Ramon Valdes Cobian, as Judicial Administrator of his estate was substituted as appellant. For the sake of convenience, however, the deceased Mr. Valdes may be referred to as the appellant in this Court and as the defendant below.

Statement of Facts.

This litigation arises out of a contract evidenced by letters exchanged between Valdes and Larrinaga during the last days of October, 1898 (Plaintiff's Exhibits A and B, Record, pp. 59, 60).

Prior to that time, Valdes, being the owner of certain riparian lands and rights on the Plata River, had made an application to the Spanish Government for a franchise or concession to divert and use the waters of said river in connection with a proposed water power development at or about Comerio Falls on said river (Record, pp. 2, 13).

Larrinaga was a civil engineer by profession, and prior to the date of the contract in suit and up to the

end of September or beginning of October, 1898, had held the position of Assistant Secretary of the Interior (Record, pp. 22, 49). The application which Valdes had made for a water concession came to Larrinaga's notice during the latter's connection with the Department of the Interior (Record, pp. 47-49, 59). Larrinaga testifies that Valdes had at about that time made some propositions to him about the issues in this case, but that he (Larrinaga) refused, because of his office in the Department of the Interior (Record, p. 23).

After resigning his position as Assistant Secretary of the Interior, Larrinaga at once became Engineer of Harbor Works (Record, pp. 22, 23) and it was then that he entered into the contract with Valdes which is the subject of the present litigation. The letters constituting this contract were written pursuant to an oral understanding, which, notwithstanding the allegations of the Bill apparently fixing its date as prior to October, 1898 (Record, p. 3), was stated by Larrinaga in his testimony to have been made a day or a few hours before the writing of the letters (Record, p. 36). These letters were short and read as follows:

1. Letter from Valdes to Larrinaga (Record, p. 59):

BAYAMON, P. R., October 30, 1898.

MR. TULIO LARRINAGA, Capital.

My Distinguished Friend: I have applied for a water franchise from the river Plata, place called "Salto" for the purpose of developing electric power to be applied to several industries, as you know, from my application which went through you while you were Ass't Secretary of "Fomento" (Now Department of the Interior.)

So that you may help me in getting it through, and in all the rest in connection with said franchise, such as plans, projects, and in everthing concerning the technical part thereof, I need a person of my absolute confidence, and as you deserve it fully to me, and not believing that this is inconsistent with your present position of Chief Engineer of Harbor Works, I propose to interest you

in the profits of said concession in the amount of a 10 per cent., provided that you accept the obligations hereinabove mentioned.

Hoping that my proposition will be satisfactory to you, I remain, etc.

R. VALDES COBIAN.

2. Letter from Larrinaga to Valdes:
(Record, pp. 59-60.)

PORTO RICO, October 31, 1898.

Sr. DON RAMON VALDES Y COBIAN:

My Distinguished Friend: I am in receipt of your favor of the 30th inst. wherein you propose me a share of 10 per cent. in the property of the concession for the utilization of waters from the La Plata river at the point called el Salto, near Comerio, I, in exchange to help you in the steps to be gone through and in everything in connection with said concession, such as plans, projects, and all what concerns to the technical part.

I hereby accept the participation of 10 per cent. of said concession in exchange of my personal or professional services without any obligation on my part of (*sic*) make any pecuniary disbursement for exploiting or conveying said concession.

Very truly yours,

T. LARRINAGA.

The services thereafter rendered by Larrinaga, according to his own testimony, were first in connection with the obtaining from the War Department in August, 1899, of a revocable license for the use of the water power in question and later, when this had lapsed, in connection with the obtaining of the franchise or concession of December 17, 1900, from the Executive Council of Porto Rico (Record, pp. 27, 28). The services also covered applications for various extensions under the last-mentioned franchise and opposition before the Council and elsewhere to applications of others having or seeking similar licenses or franchises (Record, pp. 25, 41).

In addition to strictly engineering work in connection with the preparation of plans and drawings

and in connection with construction work, the services rendered by Larrinaga, according to his bill of complaint and his testimony included among other things also the following:

Trip to Washington and obtaining revocable license from War Department "through the efforts and good offices" of complainant (Bill, Paragraph IV, Record, p. 4; Record, pp. 27, 30); doing "work in support of the franchise before the Government" (Record, p. 38); succeeding in three or four days "in presenting the case to the Department of War in such a way that Secretary Root agreed to grant it (the license)" (Record, p. 39), appearances and explanations before the Executive Council on many occasions (Record, p. 26); obtaining franchise from Executive Council (Record, p. 40); procuring from Executive Council extensions of time for compliance with provisions of franchise "largely through the efforts of complainant" (Bill, Paragraph V, Record, p. 5); aid, assistance and efforts largely contributing toward adoption of resolution by Executive Council in favor of surrender of $10,000. bond deposited pursuant to the December, 1900, franchise (Bill, Paragraph VI, Record, p. 5); being "instrumental in having the Vandergrift franchise knocked out" by showing its absurdity to the Executive Council (Record, p. 41); approaching the Government in Washington to see that the decision of the Executive Council against the Vandergrifts be ratified (Record, p. 37); activity and diligence in Washington in assisting in securing the order of the President of the United States annulling the so-called Vandergrift franchise, "which said order annulling the same was finally and largely through the efforts of your orator approved by the President of the United States" (Bill, Par. VII, Record, pp. 6, 7).

Upon this state of facts Valdes contended in the Court below and the appellant will contend in this Court that the contract in suit, being a contract on a contingent basis for services in procuring favorable action by a legislative body or other public officials,

was illegal and that in any event the complainant's remedy, even assuming the legality of the contract, was at law and not in equity.

The Court below held adversely to Mr. Valdes on both these contentions.

The amount of the recovery to which the Court below held Larrinaga to be entitled was, or must have been, arrived at on the theory that the franchise granted by the Executive Council on December 17th, 1900, although forfeited by resolution of said body of July 21st, 1902, was nevertheless sold by Valdes on June 1st, 1905, for $131,000. face amount of bonds and stock of Porto Rico Power & Light Company, and that in the absence of evidence as to the actual value of these securities Larrinaga was entitled to an amount equal to 10 per cent. of the face value thereof.

This theory is, however, contrary to the documentary as well as oral evidence in the case. This will be more fully discussed under Points III. and IV. of the argument below, but in order that this Court may have the entire matter before it in considering Points I. and II. relative to the equity jurisdiction in the premises and the legality of the contract, some of the other important facts are set out here.

That the franchise which was granted by the Executive Council on December 17th, 1900, was declared forfeited by resolution of July 21st, 1902, is admitted (Bill, Paragraph VI., Record, pp. 5, 6; see also Record, pp. 40 and 83-84), even though claims were made thereafter by Valdes and the complainant questioning the legality of such forfeiture (Record, pp. 6, 18) and even though Mr. Valdes remonstrated and claimed that the franchise should not be revoked, because compliance with the terms of the franchise was prevented by litigation (Record, p. 40).

It further appears that at the time of the alleged sale of the franchise of December 17th, 1900, and after the forfeiture of the Vandergrift franchise, a

new petition by Valdes for another franchise was under consideration (Record, pp. 41, 68).

On January 14th, 1905, Valdes entered into an agreement with J. G. White & Company, Inc., for the sale of all his interests in connection with the proposed Comerio water power development to a new corporation intended to be formed (Record, pp. 67 to 75).

This agreement recited the ownership by Valdes of certain rights, properties, privileges, franchises and concessions at or about Comerio Falls, including the following:

> "(*a*) Concession or franchise granted, and alleged to be forfeited by the Executive Council of Porto Rico to Ramon Valdes for the use of Comerio Falls water power, and transmit same to San Juan, etc.
>
> (*b*) Certain lands and buildings thereon, standing in the name of said Valdes, in the barrio 'Dona Elena';
>
> (*c*) Certain easements in and over lands to be used in connection with said said power development;
>
> (*d*) Certain options for acquisition of lands affected by said easements and convenient for such purposes."

The agreement further recited that "Valdes represents that he has petitioned or is about to petition or cause a petition to be filed, for a concession or franchise authorizing him or his representatives, among other things, to use the water of said Rio de la Plata, at or near said falls, for the development of power by building dams, canals, raceways and apparatus for power development, or confirming him or them in such rights" (Record, p. 68) The agreement thereupon provided for the sale and conveyance by Valdes of everything included in said recitals for certain bonds and stock of the new company which were to be deposited in escrow to be delivered to Valdes when the Company should have acquired a valid and sufficient title to the said water

rights, properties, privileges, franchises and concessions, and "to the franchise or concession applied for, or about to be applied for, for the development of power by building dams, canals, raceways and transmission lines and other apparatus" (Record, p. 69). It is further provided in Article IX of said agreement that the new company might retransfer to Valdes the properties conveyed by him and obtain a surrender of the securities deposited in escrow in the event that the new company should fail "under the said transfers from said Valdes or under any application for additional franchises made by said Valdes, or on his behalf, or on behalf of the said new company, to obtain the right to develop said water power, so that it is not in actual possession of the use of said water for power development within three years" from the date of the agreement (Record, p. 74).

On June 1st, 1905, a deed of conveyance was executed by Valdes to the Porto Rico Power & Light Company, a Maine corporation organized January 30, 1905, whereby Valdes transferred the real property owned by him, consisting of three parcels, together with the easements and rights specifically described, to the Porto Rico Power & Light Company for $28,000. in mortgage bonds of the Porto Rico Power & Light Company, and $103,000. in full paid stock of said Company (Record, pp. 89, 90).

This conveyance did not refer to or include the forfeited franchise of December 17th, 1900, nor any claim of Valdes in reference to such franchise.

The conveyance did, however, provide that the bonds and stock representing the purchase price should be deposited for the purpose of being delivered to Mr. Valdes as soon as the purchasing company should have obtained a valid title to the properties, rights and concessions sold and "shall be in possession of the franchise or concession on (*sic*) which Mr. Valdes has made application for (*sic*) the Executive Council of Porto Rico according to the stipulations of Paragraph II of contract executed on

the 14th day of January", being the contract with J. G. White & Company, Inc., above referred to (Record, p. 90). The plaintiff himself testified that the parcels of land included in the conveyance from Valdes to the Porto Rico Power & Light Company were in connection with the franchise "valuable, very valuable" (Record, p. 32), and that the project could hardly have been carried out or the waters impounded without the possession of these lands and easements (Record, p. 32).

The Porto Rico Power & Light Company thereupon on October 26th, 1905, applied to the Executive Council for a franchise for the development of the Comerio Falls water power. A copy of this application appears on pages 79 to 81 of the printed record, and notwithstanding the omission of any reference thereto in the June 1st, 1905, deed, states that the company controls the "rights which may exist" under the franchise of December 17th, 1900, and purports to reserve any and all rights which the company may have under said franchise in the event that its new application should not be granted.

The admission in evidence of the last mentioned statement of this application was objected to by counsel for Valdes in the Court below on the ground that the same was not binding upon Valdes (Record, p. 31; Assignment of Errors III, Record, p. 96).

A new franchise was thereupon on or about January 4th, 1906, granted to the Porto Rico Power & Light Company in accordance with its application (Record, pp. 85 to 88), it being expressly recited in Section 15 of such franchise that

> "the granting of this franchise by the Executive Council of Porto Rico shall not be deemed in any sense a recognition of any right or claim made by Ramon Valdes, or any company or corporation to any previous grant or concession of the water power of Comerio Falls."

Upon the foregoing state of facts, the Court, ruling adversely to the appellant in reference to the

legality of the contract and the question of equitable jurisdiction, rendered a decree in complainant's favor for 10 per cent. of the entire amount received by Valdes for his conveyance of June 1, 1905, disregarding the fact that the franchise of December 17, 1900 was not included in the conveyance at all and further disregarding the concededly great value of the lands actually transferred which would have represented a great part of the consideration received, even if the forfeited franchise had been regarded as included in the transfer.

An assignment of errors was filed on behalf of Valdes at the time of entering his appeal (Transcript of Record, pp. 96 to 100).

These assignments (omitting IX, XI and XIV which are not insisted upon) are specified by the appellant as the errors relied upon in this appeal and are as follows:

ASSIGNMENT OF ERRORS.

I.

That the District Court of the United States for the District of Porto Rico erred in overruling the demurrer to the bill of complaint, founded upon the ground that the complainant in this cause has a full, adequate and complete remedy at law.

II.

That the said Court erred in denying the motion to dismiss the case, made after the reading of the bill of complaint, which motion was founded upon the ground that the complainant had a full, adequate and complete remedy at law, for the recovery of the amount claimed in this suit.

III.

That the said Court erred in admitting in evidence a certified copy of the petition made by the Porto Rico Power & Light Company to the Executive Council of Port Rico, under date of October 26th, 1905, whereby the said Company applied for a new franchise. The material part of said petition, offered in evidence reads as follows:

"The undersigned further begs to submit for your consideration the fact that it controls

the rights which may exist under a certain franchise granting to one Ramon Valdes the right to use the waters of the Rio de la Plata, and to develop the same, which said franchise was granted by your Honorable Body on the 17th day of December, 1900 and approved by the Governor on the 18th day of December 1900, and of which franchise the undersigned Company is the assignee, by assignment of said Valdes to this Company, dated June 1, 1905."

Objection was made to the admission of the said petition in evidence, for the reason that the statement therein contained had not been made by the defendant Ramon Valdes, and therefore could not be binding upon him.

IV.

That the Court erred in sustaining the objections of counsel for the complainant, to the question asked by counsel for the defendant, upon the cross examination of the said complainant. The question was to the effect whether the complainant had had anything to do with an application made by the defendant to the Spanish Government. The objection was sustained upon the ground that the question was immaterial, because the testimony, in the opinion of the Court, shows that the complainant had no official position with any Government which had authority to grant a franchise in Porto Rico. An exception was taken to such ruling.

V.

That the said Court erred in denying defendant's motion to dismiss the bill of complaint, founded upon the ground that the evidence does not show that there was an actual sale by the defendant Valdes to the Porto Rico Power & Light Company of any franchise or concession granted by the Executive Council of Porto Rico.

VI.

That the Court erred in denying the motion made by the defendant at the close of complainant's case to dismiss the bill upon the ground that there was no evidence as to the amount, if any, received by the defendant

Valdes from the Porto Rico Power & Light Company as a consideration for the alleged transfer of a franchise, so as to enable the Court to render its judgment, nor as to the value of the said franchise said to have been transferred by the said defendant.

VII.

That the Court erred in overruling the defendant's motion made at the close of the complainant's case, for the dismissal of the bill, upon the grounds that neither the allegations of the bill itself, nor the evidence introduced by the complainant, have made out a case entitling the complainant to relief in a court of equity and that the complainant could have obtained relief, if he is entitled to any, in a court of law, where he would have a full, adequate and complete remedy.

VIII.

That the Court erred in denying complainant's motion to dismiss the bill, made upon the ground that the contract upon which the suit is brought is, from the showing of the bill and the evidence of the complainant, illegal and against public policy, and as such, null and void, because it provides for a contingent compensation for acting as agent in securing a franchise from the government, the contingency being the success of the agent in securing the franchise.

X.

That the Court erred in refusing to admit in evidence the bill of complaint, which was offered by the defendant for the purpose of impeaching the testimony of the complainant, by showing, that according to the allegations of the said bill of complaint, the verbal agreement or compact between the complainant and the defendant was made on a date prior to the month of October, 1898, while the complainant in his testimony stated that the verbal agreement had been made during the month of October, one or two days before the date of the letter written by the defendant to the complainant. The evidence was rejected as being immaterial and subject to be stricken out. An exception was taken to such ruling.

XII.

That the Court erred in refusing to admit in evidence a letter written by the complainant to the defendant (Exhibit "D" for Defendant, not admitted), which was offered for the purpose of showing the nature of the services that were performed by the complainant, besides the professional services rendered in connection with the franchise.

The letter so offered and rejected as immaterial, appears on pages 91-92 of the Record.

XIII.

That the Court erred in holding that the contract upon which the suit was brought is not against public policy and is in force, and that the complainant is entitled to recover.

XV.

That the Court erred in holding that by the deed of June 1st, 1905, the defendant conveyed the franchise in which the complainant claims an interest, to the Porto Rico Power & Light Company, when the deed shows very clearly that by the said deed the defendant conveyed to the said Company several parcels of lands and certain easements in which the complainant had no interest whatsoever.

XVI.

That the decree of the Court in favor of the complainant is erroneous, in that it is against the evidence introduced by the defense and admitted by the complainant, to the effect that the franchise upon which the complainant claims an interest was declared forfeited by the Executive Council of Porto Rico.

XVII.

That the decree of the Court is erroneous in that it provides that the complainant shall have and recover from the defendant ten per cent. of the total price received by the defendant from Porto Rico Light & Power Company, under the deed of June 1st, 1905, which refers to lands and easements upon which the complainant had no interest, under his contract with the defendant.

XVIII.

That the decree of the Court is erroneous in that without any evidence offered by either side to prove the value of the franchise claimed to have been sold by the defendant, and in the absence of any definite means of ascertainment, it arbitrarily holds that the complainant is entitled to recover from the defendant the sum of $13,000.00, that is ten per cent. of the price received by the defendant under the deed of June 1st, 1905, without making any deduction of the value of the other properties conveyed by the said deed, and in which the complainant had no interest.

Appellant's argument on the foregoing errors divides itself into four heads, each dealing with several of the above assignments of error, as follows:

POINT I.

Complainant had a full, adequate and complete remedy at law and was not entitled to specific performance, accounting or other equitable relief.

POINT II.

The contract in suit, being a contract for contingent compensation for services in procuring legislation or other action by public bodies or officials, is against public policy and void and therefore not enforcible either in law or in equity.

POINT III.

The franchise on concession, in the profits of which Larrinaga by reason of his contract claims to share, was declared forfeited by the Executive Council, and Valdes did not sell or purport to sell the same or make any profit thereon.

POINT IV.

The contract, in any event, limited complainant's compensation to 10% of the profit derived by Valdes from the franchise itself, and the decree was wrong, therefore, in allowing recovery of 10% of the total price received by Valdes for valuable lands and easements conveyed by the deed of June 1, 1905.

Point I will cover above assignments Nos. 1, 2 and 7.

Point II will cover above assignments Nos. 4, 8, 10, 12 and 13.

Point III will cover above assignments Nos. 3, 5, 6, 15 and 16.

Point IV will cover above assignments Nos. 17, and 18.

ARGUMENT.

POINT I.

The complainant had a full, adequate and complete remedy at law, and was not entitled to specific performance, accounting or any other equitable relief.

Assignments of Error Nos. 1, 2 and 7,

By demurrer to the bill of complaint, by a motion to dismiss after the reading of the bill of complaint at the trial, and by motion to dismiss at the close of the complainant's case, the Court below was asked by the defendant to dismiss the bill of complaint on the ground that the complainant had a full, adequate and complete remedy at law.

The Court's reasons for overruling the demurrer appear in the record as follows:

> " The Court: The demurrer is overruled on the ground, first, that fraud is charged, at least, legal fraud is charged by the bill, and a partnership or profit sharing contract is alleged and set up and admitted by the demurrer, as are all other facts properly pleaded in the bill. It is, therefore, clearly a case for equitable jurisdiction, and, in the opinion of the Court, no adequate remedy existing at law, the demurrer will be overruled " (Record, pp. 21, 22).

The grounds so stated by the Court below as its reasons for entertaining jurisdiction are readily shown to be insufficient.

A. No fraud either legal or actual was alleged or proved. Even if it did exist, it would not be ground for equitable jurisiction.

Nothing can be found in the bill of complaint which can fairly be construed as a charge of fraud

on the part of the defendant. Certainly the negotiations of the defendant with certain capitalists "without the knowledge of the complainant and without giving to the complainant an opportunity to be heard or have any advice in connection therewith," and the fact that the operations of Valdes in connection with the incorporation of the new company and the sale by Valdes to the new company were not communicated to the complainant can hardly be construed as charges of fraud, nor can the failure on the part of the defendant to make any accounting or to pay over to the complainant money alleged to be due under a contract be regarded as fraud either legal or actual. The cause of action alleged in the bill of complaint is one for breach of contract pure and simple, for which, as will be shown below, there was an adequate remedy at law.

Moreover it is well settled that equity will not take jurisdiction even in cases of fraud where the relief properly obtainable on that ground can be obtained in a court of law.

Equitable Life Assurance Society vs. *Brown*, 213 U. S., 25, 50.

A mere charge of fraud does not give equity jurisdiction.

United States vs. *Bitter Root Development Company*, 200 U. S., 451, 472.
Ambler v. *Choteau*, 107 U. S., 586, 591.

> "In cases of fraud or mistake as under any "other head of chancery jurisdiction, a court "of the United States will not sustain a bill "in equity to obtain only a decree for the "payment of money by way of damages, "when the like amount can be recovered at "law in an action sounding in tort or for "money had and received."

Buzard v. *Houston* 119 U. S., 347, 352.

B. The contract in suit was purely a contract of employment and not a partnership contract.

The view of the Court below that the contract as alleged in the bill of complaint, was a partnership contract, is without foundation.

In paragraph III of the bill of complaint, the contract is set forth as an agreement "whereby it was agreed that said complainant should *assist* said defendant in securing said franchise * * * and it was agreed that said complainant should receive in *compensation for his assistance and services* in the premises a sum equal to ten per cent. (10%) of the net value of all profit or benefit which might be derived from the said franchise in case the same should be granted."

In at least seventeen other places in the bill of complaint there are allegations of the complainant's "aiding and assisting" the defendant, of the defendant's "utilizing the services of the complainant" and similar allegations.

The prayers for relief do not ask for a partnership accounting, but state complainant's alleged right as a right to receive "an *amount equal to* ten per cent. (10%) of all that has been received, or of all which may be received by said Valdes as the value or proceeds of said franchises or concessions."

The allegations of the complaint therefore clearly show, it is submitted, that the contract was, and was by the complainant understood to be, a contract of employment with provision for contingent compensation to the employee.

The evidence is in accordance with this view.

The letter written by Valdes to the complainant on October 30th, 1898 (Complainant's Exhibit "A," Record, p. 59), makes the proposition that the complainant should help Valdes in getting through the franchise, and complainant's answer of October 31st, 1898, distinctly accepts the remuneration offered "in exchange of my (complainant's) personal or professional services" (Record, p. 60).

In his own testimony complainant lays stress on the fact that he did everything that Mr. Valdes called on him to do (pp. 26, 29–30), and he is introduced by Valdes to the Secretary of the Interior as "my consulting engineer," authorized to represent Valdes in everything (Complainant's Exhibit "D," Record, p. 60). No one would contend that complainant incurred any liability to third persons for any obligations of the venture.

Clearly, therefore, there was no basis for equitable jurisdiction on the ground of the existence of any partnership relation between the parties.

The fact that in a contract of employment the employee's compensation is measured by a certain proportion of the profits does not make it a partnership.

Meehan v. *Valentine*, 145 U. S., 611, 619–620, 623–624.
Berthold v. *Goldsmith*, 24 How., 536.

C. No other ground of equitable jurisdiction existed in the case at bar.

1. COMPLAINANT'S PRAYER FOR SPECIFIC PERFORMANCE DID NOT CONFER EQUITABLE JURISDICTION.

While the beginning of the complainant's second prayer for relief refers to specific performance of the agreement in suit, the claim of the complainant is explained by the portions which follow and which ask for a decree in alleged conformity with the terms of the agreement that the complainant "is entitled to have and receive an amount equal to ten per cent. of all that has been received or of all which may be received by the said Valdes as the value or proceeds of the franchises or concessions" in question. The bill then continues with a prayer for an accounting and for the payment to the complainant of the amount found due upon such accounting.

The Court itself, in its opinion upon the motion to dismiss at the end of the complainant's case,

speaks of the suit as a suit for an accounting and makes no reference to specific performance.

Were it sought, however, to sustain equitable jurisdiction in the case at bar on the ground of specific performance, the answer would be two fold.

(*a*) The remedy upon a contract calling for the payment of money or the delivery of other personal property is at law and not by specific performance in equity.

> "All actions which seek to recover specific property, real or personal, with or without damages for its detention, or a money judgment for breach of a simple contract, or as damages for injury to person or property, are legal actions, and can be brought in the Federal courts only on their law side."
>
> *Scott* v. *Neely*, 140 U. S., 106, 110.

(*b*) Specific performance would in any event have to be refused on account of the want of mutuality in the remedy since obviously Valdes could not have obtained specific performance of the complainant's contract for personal services.

2. THE FACT THAT COMPLAINANT'S COMPENSATION UNDER THE CONTRACT WAS FIXED AT A PROPORTION OF THE PROFITS REALIZED BY THE DEFENDANT FROM THE FRANCHISE DID NOT ENTITLE THE COMPLAINANT TO AN ACCOUNTING IN EQUITY.

It is well settled that a bill in equity for an accounting is not the proper remedy to recover profits realized by infringement of letters patent or to recover royalties under a license, it being held in such cases that there is an adequate remedy at law.

> *Root* v. *Railway Co.*, 105 U. S., 189.
>
> *Washburn & Moen Manufacturing Co.* vs. *Freeman Wire Co.*, 41 Fed. Rep., 410, 412.
>
> *Safford* vs. *Ensign Manufacturing Co.*, 120 Fed. Rep., 480.

The same objection exists to a bill in equity for an accounting in the case at bar.

Valdes did not occupy any fiduciary relation toward the complainant. There were no mutual accounts between the parties, and the account out of which the complainant's claim arose was not in any way complicated. Only one simple transaction was involved, and it is in the product of this one transaction that the complainant claimed to share. The mere fact that the complainant may not have known the amount of the total profit realized by the defendant, is not sufficient to bring the case into equity under the authorities above cited.

A court of equity is without jurisdiction in a suit in which discovery and relief are sought, but where the only ground for equitable relief appears to be a discovery of evidence to be used in the enforcement of a purely legal demand.

See cases above cited. Also:

Grieb vs. *Equitable Life Assurance Society*, 189 Fed. Rep., 498, 502–503.
Brown vs. *Equitable Life Assurance Society*, 142 Fed. Rep., 835.
Paton vs. *Majors*, 46 Fed. Rep., 210.

Equity cannot take jurisdiction merely because of any difficulty in proving the complainant's case.

United States v. *Bitter Root Co.*, 200 U. S., 451, 472–475.

In the case of *Martin* vs. *Wilson*, 155 Fed. Rep., 97 (*Certiorari* denied, 210 U. S., 432), the bill in equity alleged that the complainant owned certain stock and bonds of the Louisville, New Orleans & Texas Railroad Company, that the defendant represented that he had contracted to sell a large amount of the stock and bonds of said company to the Illinois Central Railroad Company, and agreed to pay the complainant the same prices the defendant was to receive for his own stock and bonds and for those of other holders which he might acquire. The

bill then alleged that a written contract to that effect was entered into between the complainant and the defendant and carried out, but that the representations of the defendant were false and fraudulent in that the defendant was to receive and did receive larger prices than those represented by him. Equitable relief and an accounting were prayed for on the ground among others that the extent to which the defendant had secretly profited by the transaction was unknown to the complainant. In reference to this contention, the Circuit Court of Appeals, Second Circuit, holding upon the facts stated that the complainant had a complete and adequate remedy at law, said:

> "It is argued that the amount received from the Illinois Company is unknown and that it is necessary to invoke the powers of a court of equity to compel a discovery in this regard. Assuming for the moment that the difficulty of obtaining testimony affords a reason for turning a complaint in an action at law into a bill in equity, we are unable to see, in the present situation, why there should be any greater difficulty in the one case than in the other. The defendant knows how much he received from the Illinois Company and that company knows how much it paid for the bonds and stock. The books of the company and of the firm undoubtedly contain entries of the transactions. The process of the Court will compel the attendance of witnesses and the production of books as effectually in a common law action as in a suit in equity."
>
> *Martin* v. *Wilson*, 155 Fed. Rep., 97, 99.

In the case at bar, moreover, there was no ignorance on the part of the complainant as to the actions of the defendant bearing upon the complainant's rights under his contract, nor was there any difficulty about proving complainant's case in an action at law.

The consideration received by Valdes for his transfer to the Porto Rico Power & Light Company

could have been ascertained by the complainant from the record of the deed of conveyance, and as a matter of fact, the evidence which was introduced on behalf of the complainant at the trial in the court below shows that complainant could have proved whatever cause of action he had in a court of law as readily as in a court of equity.

The assumption of equitable jurisdiction is not discretionary. United States Revised Statutes, Sec. 723, expressly provides:

> " Suits in equity shall not be sustained in
> " either of the Courts of the United States in
> " any case where a plain, adequate and com-
> " plete remedy may be had at law."
>
> R. S., Sec. 723.

In *Babbott* vs. *Tewksbury*, 46 Fed. Rep., 86, a suit in equity was based upon a contract somewhat similar to the one at bar. The demurrer to the bill was sustained, the Court (Lacombe, *C. J.*), saying:

> " This action is brought upon an alleged oral agreement by which the defendant agreed to pay the complainant (provided complainant would introduce defendant to the person or persons who owned and controlled certain patents) a commission of 5 per cent. on the capital stock of any companies defendant might form, or cause to be formed, for the use of said patents; and, in case of the sale of said patents for any territory by defendant, 5 per cent. of the amount of such sales. The complainant further alleges that he did introduce defendant to the persons who controlled said patents; that through them, and by means of such introduction, defendant purchased and obtained the right to use said patents, and in part sold the same, realizing therefor a large amount of money (the precise amount of which is unknown) and also caused to be organized a corporation for the use of said patents, with a capital stock of $250,000. The complainant demands his 5 per cent. upon these sums, and, averring that he has asked for an account which has been refused, prays

> for discovery and for relief. The defendant has demurred, and the demurrer must be sustained. The complainant has a plain, adequate, and complete remedy at law, and therefore, under section 723, Rev. St. U. S., suit in equity cannot be sustained. Upon proof of his contract, and of the sale of the patent and the organization of the company, he can at law recover the full amount of his claim. Such proof can be secured without the aid of a court of equity. If the defendant is within the hundred-mile limit, he can be subpœnaed as a witness, and required by a *duces tecum* to produce his books and papers; if he is beyond that limit, his testimony may in like manner be taken under section 863, *Id.* All the facts within his knowledge may be thus proved as fully as they could be on an accounting. Moreover, under section 724, *Id.*, he may be required to produce books or writings in his possession which contain evidence pertinent to the issue."
>
> *Babbott* v. *Tewksbury*, 46 Fed. Rep., 86.

The same reasoning applies in the case at bar.

Assuming the legality of the contract, the complainant upon proof of his contract and proof of the sale of the franchise could have obtained in an action at law identically the same relief which he did secure by the decree in equity rendered by the Court below.

The best proof of the fact that the complainant did have an adequate remedy at law and that no accounting in equity was necessary, is that upon the case made by the complainant no accounting was actually decreed or ever took place. The Court below, upon proof by the complainant of the contract and upon the production of evidence (whether sufficient or not for that purpose) of the sale of the concession, entered a decree for an amount equal to 10 per cent. of the par value of the securities deemed by the Court to have been received by Valdes upon such sale. This was exactly the same kind of a judgment which would have been entered in an ac-

tion at law if the jury had found the facts as the Court deemed them established by the evidence, and the defendant was clearly entitled to such jury trial.

The relief granted by the decree was a simple money judgment for which there was an adequate remedy at law, and the decree cannot therefore be sustained.

Parkersburg v. *Brown*, 106 U. S., 487, at 500.

The hearing which the Court below held on June 13th, 1912 (Record. pp. 52-58), was not an accounting in equity. It was merely an inquest held by the Court as to the value of securities which the Court considered (erroneously as will be shown below) to have been received by Valdes for the franchise in question. with a view to determining the cash amount representing ten per cent. of the value of such securities. As a matter of fact, in the absence of any satisfactory evidence at such inquest, the Court took the securities at their par value and gave judgment in favor of the complainant for ten per cent. of such par value. If this was correct, the same course could have been adopted without holding any such inquest, and could have been adopted by a jury in an action at law as well as by the Court sitting in equity.

In short the conduct of the trial in the Court below, the evidence offered by the complainant, the relief granted by the Court, viz : a money judgment without accounting or other equitable relief, all show conclusively that complainant had a full, complete and adequate remedy at law and that the Court below erred in overruling the defendant's demurrer to the bill of complaint and in denying the motions of the defendant to dismiss.

POINT II.

The contract in suit being a contract for contingent compensation for services in procuring legislation, or other action by public bodies or officials, is against public policy and void and therefore not enforceable either in law or in equity.

Assignments of Error Numbers 4, 8, 10, 12 and 13.

As has been shown, Valdes employed the complainant, among other things, "SO THAT YOU (complainant) MAY HELP ME (Valdes) IN GETTING IT (the franchise) THROUGH", the compensation being contingent upon the success of the application for such franchise and measured by a proportion of the profits to be derived therefrom. (Plaintiff's Exhibit "A"; Record, p. 59).

The complainant accepted the proposition and agreed to accept the contingent compensation offered in exchange for his *personal* or professional services, agreeing "to help you (Valdes) in the steps to be gone through, and in everything in connection with said concession, such as plans, projects and all what concerns to the technical parts". (Plaintiff's Exhibit "B"; Record, pp. 59 and 60).

This was plainly a contract having as a partial consideration for the compensation to be paid to the complainant, services to be rendered by the complainant in securing legislation or other action of public bodies or officials, upon a matter of public interest in respect of which neither of the parties had any claim against Porto Rico or the United States. Such an arrangement, especially when made upon a contingent basis, is clearly illegal under the decisions of the United States Supreme Court.

Hazelton v. *Sheckells*, 202 U. S., 71.

It makes no difference under the above and other decisions that other, such as technical engineering services, were also to be rendered by the complainant, so that the objectionable agreement constituted only part of the consideration; for "every part of the consideration goes equally to the whole promise, and therefore if any part of it is contrary to public policy, the promise falls."

The agreement for engineering work in no way limited or qualified the specific agreement for assistance "*in getting it* (the franchise) *through*."

Complainant's agreement was for *personal* as well as professional services, in short for everything required to help Valdes in getting the franchise through. The letter from Valdes to the complainant said:

> "So that you may help me in getting it (the "franchise) through, AND in all the rest in "connection with said franchise, such as "plans, projects, AND in everything concern-"ing the technical part thereof" (Record, p. 59).

The services actually rendered by complainant were not limited to engineering services but according to his testimony and the bill of complaint included numerous other items such as those enumerated on page 5 of this brief.

Whether the services so rendered by complainant under the agreement actually involved anything improper or illegitimate, is immaterial. For such agreements are illegal because they have a tendency "to induce improper solicitations," and they "intensify the inducement by the contingency of the reward."

In the language of the Supreme Court of Pennsylvania in *Clippinger* vs. *Hepbaugh*, 5 W. & S., 315, 321,

> "It matters not that nothing improper was done or was expected to be done by the plaintiff. It is enough that such is the tendency

> of the contract, that it is contrary to sound morality and public policy, leading necessarily in the hands of designing and corrupt men, to improper tampering with members and the use of an extraneous, secret influence over an important branch of the government."
>
> *Clippinger* v. *Hepbaugh*, 5 W. & S., 315, 321.

The language of the Supreme Court of the United States in *Providence Tool Company* vs. *Norris*, 2 Wall., 45, in holding illegal an agreement for compensation for procuring a contract from the Government to furnish supplies, is also pertinent:

> "The principle which determines the invalidity of the agreement in question has been asserted in a great variety of cases. It has been asserted in cases relating to agreements for compensation to procure legislation. These have uniformly been held invalid, and the decisions have not turned upon the question whether improper influences were attempted or used, but upon the corrupting tendency of the agreement. Legislation should be prompted solely from considerations of the public good and the best means of advancing it. * * * Agreements for compensation contingent upon success suggest the use of sinister and corrupt means for the accomplishment of the end desired. The law meets the suggestion of evil, and strikes down the contract from its inception. * * * It is sufficient to observe generally that all agreements for pecuniary consideration to control the business operations of the government, or the regular administration of justice, or the appointments to public office, or the ordinary course of legislation are void as against public policy *without reference to the question whether improper means are contemplated or used in their execution*" (italics are ours).
>
> *Providence Tool Co.* vs. *Norris*, 2 Wall, 45, 54, 55, 56.

The case of *Hazelton* vs. *Sheckells*, 202 U. S., 71, above referred to, which appears to be the most

recent decision of the Supreme Court on contracts of this character, is so directly in point that the appellant's contention in the case at bar cannot be better set forth than in the language which the Court used in reference to the somewhat similar contract which was before it in the Hazelton case. In that case the bill was for the specific performance of a contract dated December 11, 1902, whereby defendant agreed within a stated time to sell to complainant for nine thousand dollars part of a lot in a square in Washington, which Congress thereafter voted to acquire for the erection of a hall of records The contract provided that it should be null and void if Hazleton should not accept the offer within the time mentioned. The bill alleged that a part of the consideration for the contract was "services rendered both before and after the making of the said contract by the plaintiff in bringing the property to the attention of the committees of Congress as a suitable and appropriate site for a hall of records." The bill then set forth the services actually rendered by the plaintiff, viz., collecting and printing facts for the information of the committees and members of Congress, making briefs and arguments, and drawing a bill for the purchase or condemnation of the square. The bill was passed by Congress, and complainant having concluded negotiations for the sale of the property to the United States for $14,395.50 sought to compel defendant to perform his above agreement to convey the property to complainant for $9,000. The bill was dismissed by the Supreme Court of the District of Columbia and the Court of Appeals, and the decree dismissing the bill was affirmed by the United States Supreme Court on the grounds set forth in the opinion of the Court, as follows:

> "We assume that the bill sufficiently shows an acceptance of the defendant's offer within the time, although it does not allege it in terms. We assume also that the consideration is alleged sufficiently, subject to the question

whether it is one upon which a contract lawfully may be based. But the Court is of opinion that that question must be answered in the negative. Every part of the consideration goes equally to the whole promise and, therefore, if any part of it is contrary to public policy, the whole promise falls. * * * According to the bill, and no doubt according to the fact, a part of the consideration was services, as we have quoted, and therefore it is not true, as argued, that the plaintiff could have demanded a conveyance on tendering the nine thousand dollars alone. But the services contemplated as a partial consideration of the promise to convey were services in procuring legislation upon a matter of public interest, in respect of which neither of the parties had any claim against the United States. An agreement upon such a consideration was held bad in *Tool Co.* v. *Norris*, 2 Wall., 45. Of course we are not speaking of the prosecution of a lawful claim."

"It will be noticed further that the conveyance was in substance a contingent fee The plaintiff was not bound to accept it and naturally would not do so unless he could agree as he did with the Government for a larger price. The real inducement offered to him was that he would receive all that he could persuade the Government to pay above the sum named. *It is true that if we take the inartificial statements of the bill literally the part of the consideration which we are discussing was the services, not a promise to render them. The promise to convey did not become binding until the services were rendered, and, when rendered, according to the allegations of the bill they were legitimate. We assume that they were legitimate, but the validity of the contract depends on the nature of the original offer, and whatever their form the tendency of such offers is the same. The objection to them rests in their tendency, not in what was done in the particular case.* Therefore a court will not be governed by the technical argument that when the offer became binding it was cut down to what was done and was harmless. *The court will not inquire what was done.* If that should be improper it

probably would be hidden and would not appear. In its inception the offer, however intended, necessarily invited and tended to induce improper solicitations, and it intensified the inducement by the contingency of the reward. *Marshall* v. *B. & O. R. R.*, 16 How., 314, 335, 336."

"The general principle was laid down broadly in *Tool Co.* v. *Norris*, 2 Wall, 45, 54, that an agreement for compensation to procure a contract from the Government to furnish its supplies could not be enforced irrespective of the question whether improper means were contemplated or used for procuring it. *McMullen* v. *Hoffman*, 174 U. S., 639, 648. And it was said that there is no real difference in principle between agreements to procure favors from legislative bodies, and agreements to procure favors in the shape of contracts from the heads of departments, 2 Wall, 55. In *Marshall* v. *Baltimore & Ohio R. R.*, 16 How., 314, 336, it was said that all contracts for a contingent compensation for obtaining legislation were void, citing, among other cases, *Clippinger* v. *Hepbaugh*, 5 W. & S., 315, and *Wood* v. *McCann*, 6 Dana (Ky.), 366. See also *Mills* v. *Mills*, 40 N. Y., 543. There are other objections which would have to be answered before the bill could be sustained, but that which we have stated goes to the root of the contract and is enough to dispose of the case under the decisions heretofore made." Italics are ours.

Hazelton v. *Sheckells*, 202 U. S., 71, 78–79.

In the case of *Wood* v. *McCann*, 6 Dana (Ky.), 366, cited with approval by the United States Supreme Court in the Hazelton case, the Court said:

"Had these (the declaration and the note as described in it) shown that the fee or any portion of it, depended on the passage of the legislative acts or either of them, we should be clearly of the opinion that the contract should be deemed illegal and void; because a contingent fee is a direct and strong incentive to the exertion of not merely *personal* but

> sinister influence upon the legislature, and therefore public policy forbids the legal recognition of any such contracts. * * *
>
> *Wood* v. *McCann*, 6 Dana (Ky.), 366, 370.

The Court below seeks to draw a distinction between a proper argument and representation to a legislative body on one hand and an attempt to influence legislation by unfair means on the other hand. Such distinction, however, has no bearing in the case at bar. The contract in suit was not a contract for proper argument or representation and did not specify in detail what acts the complainant was to do. It was a single indivisible contract on a contingent basis for assistance in procuring a franchise. To such a contract the language of the Supreme Court of the District of Columbia in *Weed* vs. *Black*, 2 MacArthur, 268 applies:

> "If the terms of the contract be broad enough to cover services of any kind whether secret or open, honest or dishonest, the law pronounces a ban upon the paper itself."
>
> *Weed* vs. *Black*, 2 MacArthur 268 ,274.

> "We have said that for professional services in this connection a just compensation may be recovered. But where they are blended and confused with those which are forbidden, the whole is a unit and indivisible. That which is bad destroys that which is good, and they perish together."
>
> *Trist* vs. *Child*, 21 Wall. 441, 452, 274.

In *Sussman* vs. *Porter*, 137 Fed. Rep. 161, the Court in holding invalid an agreement to procure a municipal franchise to operate a trolley line for a fee contingent upon success, citing numerous cases in the United States Supreme Court and other Courts, uses language exactly applicable to the agreement in the case at bar:

> "It is not, therefore, a question whether improper influences were contemplated or

used or not, but the contract is vitiated from the fact that it provides for the procurement of legislation, whether municipal or otherwise. The law looks to the general tendency of such agreements and it closes the door to temptation by refusing them recognition in any of the courts of the country." * * *

* * * Cases to the above effect might be cited indefinitely, and very many are cited in the cases already referred to It is clearly deducible from them that a contract to procure or influence legislation is bad, whatever the intention of the parties may have been, and whether the influences actually exerted thereunder were honest or corrupt. It is the temptation to corruption and dishonesty which the courts will not tolerate. It will be noticed, too, that some of the cases cited lay great stress upon the fact that a contingent fee is dependent upon the success of the service. The rule of law in all these and similar cases is that the court will not aid either party to the contract, but each will be left in the position in which he has placed himself. Judicial aid will not be given to either party to a corrupt agreement. This is not because the court desires to favor either party, but because the agreement is corrupt and tainted. *In the case at bar an all-important part of the agreement was the procurement of municipal legislation. This was the service stipulated for, and this was the service agreed to be rendered by the plaintiff's assignor. What he was to do in furtherance of the agreement, or how it was to be done, is not stated in terms, but under the cases that is a matter of indifference; we are not compelled to read between the lines of the contract to spell out its methods, or ascertain how it was to be carried out,* * *" (Italics ours).

Sussman v. *Porter*, 137 Fed. Rep., 161, 164–165.

The evil tendency of contracts of this character is very well illustrated by complainant's counsel, himself, in the court below, when he objects to the admission in evidence of defendant's Exhibit "D"

(Record, p. 91), "on the ground that the contract sued on being by its terms a valid contract, and not subject to the objection of being a lobbying contract or a contract against public policy, the mere fact that thereafter this plaintiff, if he has so done, did in his zeal try to bring to bear any personal influence which he might have had to obtain the granting of the franchise, cannot invalidate the contract, legal in itself, on which suit is brought.' (Statement of complainant's counsel, Record, p. 51).

It is the very fact that contracts, such as the one at bar, have a *tendency* to produce such zeal, manifesting itself in the exercise of improper influence that makes the contract itself against public policy and void under all the decisions referred to.

Counsel's statement above quoted is itself the irrefutable argument against the validity of the contract.

It should be added that if the acts actually performed by the complainant under the contract were to enter into consideration, the exclusion of defendant's Exhibit "D" (Record, p. 91) tending to show the exercise of personal influence would have been serious and reversible error and the various services set out by the complainant in his testimony and bill of complaint (Record, pp. 4, 5, 6, 7, 26, 27, 30, 38, 39, 40 and 41), summarized on page 5, of this brief, would be found not to have been proper argument or representation, but to fall within the prohibited class of activity. Naturally in view of the defense of illegality contained in the defendant's answer, complainant could not be expected to testify openly and directly as to any personal influence which may have been brought to bear by him in connection with defendant's applications for franchises and licenses and in connection with the opposition to the Vandergrift concession, and the proceedings for its annulment.

As was suggested in *Hazleton* v. *Sheckells*, *supra*, the inquiry into what was actually done must be

largely futile in cases of this kind, "for if that should be improper it probably would be hidden and would not appear."

Reading the record in the light of the authorities above cited and the sound principles enunciated by them, there can be doubt of the baneful influence, both prospective and actual, of the contract in suit, and the bill should have been dismissed on the ground that such contract was against public policy and void.

The case of *Nutt* v. *Knut*, 200 U. S., 12, upon which the court below relies, is no authority on the question of the legality of the contract under consideration. The case came up on writ of error to the Supreme Court of the State of Mississippi, and in accordance with the practice on such writs the finding of the highest State Court on matter of State law, was accepted by the United States Supreme Court.

POINT III.

The franchise or concession, in the profits of which Larrinaga by reason of his contract claims to share, was declared forfeited by the Executive Council and Valdes did not sell or purport to sell the same or make any profit thereon.

Assignments of Error, 3, 5, 6, 15 and 16.

The franchise upon the alleged sale of which complainant's right to recovery in the court below was based, is the franchise granted by the Executive Council on December 17, 1900.

It is not claimed that either the complainant or Valdes had anything to do with the franchise of January 4, 1906, granted to the Porto Rico Power &

Light Company (Record, pp. 85-88). or that the complainant had anything to do with the petition on behalf of Valdes referred to in the recitals of the agreement with J. G. White & Company, Inc., of January 14, 1905, as pending or about to be filed.

The wording of this recital was that Valdes represents that " he has petitioned, or is about to petition or cause a petition to be filed " (Record, p. 68). It does not appear, however, that any such petition was then pending or was ever filed by Valdes.

It is not disputed that the Executive Counsel in July, 1902, passed a resolution declaring the December 17, 1900, franchise forfeited (Bill of complaint, paragraph V., Record, p. 5; defendant's exhibit " A ", Record, pp. 83 to 84).

Even though Valdes, and the complainant on behalf of Valdes, may have protested against the forfeiture of this franchise (Record, p. 40) or disputed the legality of the forfeiture, the fact remains that the Executive Council had declared it forfeited, and that no proceedings appear ever to have been taken to establish any illegality in this action of the Executive Council. In the absence of any such showing, therefore, the franchise of December 17th, 1900, must be regarded as having been forfeited in July, 1902. No franchise, therefore, existed in 1905, which Valdes could then transfer to the Porto Rico Power & Light Company, nor did the deed executed by him on June 1, 1905 (Defendant's Exhibit " C "; Record, pp. 88 to 91), purport to convey any such franchise. It covered merely the lands and easements specifically set forth, and showed as the consideration therefor $131,000. face amount of securities to be delivered to Valdes when the Company " shall be in possession of the franchise or concession on (*sic*) which Mr. Valdes has made application for (*sic*) the Executive Council " (Record, p. 90).

As a matter of fact, the franchise upon which the termination of the escrow depended, appears to have been granted upon the application of the Porto

Rico Power & Light Company, and not upon the petition of Valdes (Record, pp. 79-81, 85–88).

The deed clearly shows that the consideration was exclusively for the lands and easements conveyed and that no part of it represented the purchase price of the forfeited franchise of December, 1900, which was not included in the conveyance.

The statement contained in the application made by the Porto Rico Power & Light Company in October, 1905 (Plaintiff's Exhibit "R"; Record, pp. 79 to 81) to the effect that the applicant was the assignee of the December 17, 1900, franchise by assignment from Valdes to the Company, dated June 1, 1905, cannot of course have any evidential value, and the defendant's objection to the admission thereof as evidence of any assignment of Valdes to the Company, should clearly have been sustained. It was not shown that at the time of this application Valdes was in any way identified with the Porto Rico Power & Light Company, or that its statements or the statements of its officers whether oral or written, were in way binding upon Valdes.

The statement in question was contrary to the very terms of the conveyance to which it refers, and should therefore be disregarded.

The franchise which was granted to the Porto Rico Power & Light Company on the above mentioned petition, moreover disclaimed expressly any recognition of the forfeited December 1900 franchise (Section 15, Record, p. 85).

The fact that the December 17, 1900, franchise is referred to in the agreement between Valdes and J. G. White & Company of January 14th, 1905, (Plaintiff's Exhibit "L"; Record, pp. 67 to 75) as a franchise "granted and alleged to be forfeited by the Executive Council" (Record, p. 68), and that Article II of the agreement contracts for the transfer of all properties, privileges, franchises and concessions, covered by the recitals, does, not alter the fact that when the contract was actually carried out by the conveyance of June 1, 1905, (Defendant's

Exhibit "C", Record, pp. 88 to 91), no such franchise was included in the transfer.

The explanation may be that at the time of the signing of the contract of January 14, 1905, which no doubt was prior to a thorough investigation of the situation by the purchasers, it was deemed wise to include in the contract Valdes' rights or interest in and to everything, whether existing or not, appertaining to Comerio Falls. Between the date of this contract and the date of the conveyance, further investigation may have disclosed that the December, 1900, franchise no longer existed, and it was omitted from the formal instrument of transfer. The acquisition of the land and easement enumerated in the conveyance of June 1, 1905, was necessary for the development of the water power project (Record, p. 32), and these appear to have constituted all the property transferred by Valdes to the Porto Rico Power & Light Company, and for these the Company was willing to pay, and agreed to pay $131,000. face amount of securities, on the condition that the Company should be able to obtain from the Executive Counsel a franchise for the operation of these properties.

The old forfeited franchise of December, 1900, is not shown to have entered into the transaction at all.

On the record before the Court there is no doubt, therefore, that Mr. Valdes was correct in the position taken by him in his letter of December 13, 1906 (Plaintiff's Exhibit "S," Record, p. 82), and taken by him throughout, viz.: that, assuming the legality of the contract, all the time and expenditures in connection with the December, 1900, franchise were lost, and that there was, therefore, no profit arising out of any of the matters to which the ten per cent. (10%) agreement between Valdes and the complainant related, and the Court below, upon the motion to dismiss made by Valdes, should have so ruled.

POINT IV.

The contract in any event limited complainant's compensation to ten per cent. of the profit derived by Valdes from the franchise itself, and the decree was wrong, therefore, in allowing recovery of ten per cent. of the total price received by Valdes for valuable lands and easements conveyed by the deed of June 1, 1905.

Assignments of Error, Nos. 17 and 18.

Entirely irrespective of the errors committed by the Court below in allowing any recovery at all, it is almost too plain for argument that the amount of the recovery was in excess of any claim which the complainant made or on any conceivable theory could make.

The amount awarded was approximately ten per cent. of the face amount of the securities stated in the conveyance of June 1, 1905 (Defendant's Exhibit "C", Record, pp. 88-91), as the consideration for the properties thereby transferred, and included interest at the rate of six per cent. per annum from the date of such transfer (Record, p. 94).

We have already argued in Point III, that the consideration so received by Valdes was for the land and easements transferred, and that the conveyance did not include the franchise in which the claimant claimed a ten per cent. interest. No claim was urged or attempted to be proved by the complainant of any interest in the lands and easements in question, yet the decree below, awarding to the plaintiff ten per cent. of the entire consideration received by Valdes, assumed not only that the franchise was in-

cluded in the transfer, but that the franchise was the *only* thing of value transferred. In this the Court below entirely overlooked the complainant's own testimony of the value of the lands and easements, which was as follows:

> "Q. Then I will ask you to give the value of these properties (*b*), (*c*) and (*d*). (Being the lands, easements and options recited under corresponding paragraphs in the January 14th contract, Complainant's Exhibit "L", Record, p. 68; see p. 7 of this brief).
>
> The Court: You will have to qualify that, for use in connection with the business for which they were obtained.
>
> Q. For use in connection with the business for which they were obtained.
>
> A. It is a very difficult proposition, sir, to say the value of a property in connection with something else. Of course the absolute value of this as agricultural property is nominal, a few dollars per acre; five, ten or fifteen would not have been at the time the value of the agricultural land there because they are very abrupt, rugged, but in connection with the franchise they are valuable, very valuable.
>
> The Court: Q. Could the project have been carried out and the waters impounded without the possession of these lands and easements?
>
> A. Hardly so; it would have taken such terrible works, as for instance, a viaduct through the bed of the river, carrying that on pillars, something ridiculous to think of" (Record, p. 32).

The fact that complainant's counsel himself thus offered evidence as to the value of the lands and easements indicates that even on his own theory of the plaintiff's claim, the value of such lands and easements would have to be deducted from the entire consideration received by Valdes, in order to arrive at the profit claimed to have been made on the franchise in which alone the complainant was interested.

Notwithstanding this, and notwithstanding the express statement of complainant's counsel on page 56 of the Record, that the value of the properties, other than the franchise should be deducted from the total consideration, the Court below gave judgment for approximately ten per cent. of everything received by Valdes from the Port Rico Power & Light Company in connection with the transaction.

What the real value of the lands and easements was does not appear from the record with any degree of accuracy. One may well surmise, however, that if the matter had been properly considered, the conclusion would undoubtedly have been reached that the value of lands which were absolutely essential for the development of a water power project, and which in the nature of things could not be duplicated, must have exceeded by far the value of a forfeited franchise, which was only one of numerous franchises granted in that connection. The Executive Council could not create a water power or the lands required therefor, but it must be assumed that, in the performance of its public duties, it would on a proper showing grant a proper franchise for a desirable development. The purchaser from Valdes, viz., the Porto Rico Power & Light Company, acted on this assumption, and the proof that it was correct in so acting appears from the fact that a new franchise was granted to it on January 4th, 1906, under which the development was actually carried out.

It is clear, therefore, that the recovery allowed in the Court below was far in excess of the complainant's rights or claims, assuming even that the action had been properly brought in equity, and that the contract had been legal and had been violated by the defendant.

POINT V.

The decree of the District Court of the United States for Porto Rico should be reversed.

Respectfully submitted,

F. KINGSBURY CURTIS,
HUGO KOHLMANN,
MARTIN TRAVIESO, Jr.,
Counsel for Appellant.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1913.

No. 348.

RAMON VALDES,

Appellant,

v.

TULIO LARRINAGA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

REPLY BRIEF FOR APPELLANT.

F. KINGSBURY CURTIS,
HUGO KOHLMANN,
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Counsel for Appellant.

The Evening Post Job Printing Office, 156 Fulton St., N. Y.

ALPHABETICAL LIST OF AUTHORITIES.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1913.

No. 343.

RAMON VALDES,
Appellant,

v.

TULIO LARRINAGA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

REPLY BRIEF FOR APPELLANT.

I.

Reliance is placed in Point I of appellee's brief upon the provisions of the Civil Code of Porto Rico as supporting the appellee's contention that the arrangement between the parties created a partnership.

It will be found, however, that the definition of a partnership contract is not substantially different under the Porto Rican law from what it is under the common law.

See Story on Partnership, Chapter I; Lindley on Partnership, Book I, Chapter I.

Moreover, the contract between the parties evidenced by the two letters (Complainant's Exhibits A and B, Record, p. 59), does not fall within the definition of Section 1567 of the Civil Code of Porto Rico, quoted by the appellee. It does not purport to be a contract to "contribute money, property or industry *to a common fund.*" No provision is made for the contribution of anything by either party to any common fund, and in fact no *common fund* is constituted in any way. The contract calls for services on the part of the appellee, viz.: help "in getting it (the franchise) through," and provides for contingent renumeration "*in exchange* of my (appellee's) personal or professional services."

The correctness of the action of the Court below in overruling the defendant's demurrer to the bill of complaint (first assignment of error) is, strictly speaking, to be determined upon the allegations of the complaint alone, irrespective of any evidence which may have been introduced after the erroneous disposition of the demurrer. But if the question as to the character of the arrangement between the parties be considered upon the entire record, the bill of complaint showing complainant's understanding of the contract corroborates the appellant's contention that the contract was an employment and not a partnership contract, and any possible doubt is dispelled by complainant's own admission, when in paragraph III of his verified bill of complaint signed by his solicitors, the contract is set forth as a contract providing for the rendering of assistance by the complainant and providing as *compensation* for his assistance and services "a sum *equal to* ten per cent. of the net value of all profit or benefit which might be derived from said franchise."

The case of *Mathewson* vs. *Clarke*, 6 How, 122, to which appellee refers, is no authority for the exercise of equitable jurisdiction in the case at bar. The master of the vessel, who was to receive besides his wages one-tenth of all profits as full compensation for his services, was the *defendant* in the

suit, *not the complainant*, as appellee's brief assumes. Moreover, he became under his contract a one-tenth owner of the vessel after the first voyage. The complainant in the suit was the assignee of a certain interest in the capital of the partnership which owned the vessel and of which the master was at first an employee and later a member (p. 141). The bill as filed called upon the defendant "to render an account of his agency as master and supercargo * * * on a voyage prosecuted before he became part owner * * *; and of his agency as master, supercargo and part owner of said ship and her cargo after he became a part owner, and also of his employment of the funds of the owners" after the condemnation and sale of the vessel (p. 128). The accounting covered voyages during a period of six years and included not only accounts with 107 different persons, but also an accounting of transactions unlawfully made by the master for his own account while in the fiduciary position of master and supercargo he exercised full powers over the vessel and cargo. There is, therefore, no similarity to the case at bar.

Appellee's attempts to sustain equitable jurisdiction in the case at bar on the theory that the contract created an equitable lien enforcible in equity or that specific performance might be decreed because the contract related to a particular franchise, require no discussion. The complainant did not seek relief of either character, but merely a decree for "an amount equal to ten per cent. of all that has been received or of all which may be received by the said Valdes as the value or proceeds of said franchises or concessions." It does not appear in what respect the remedy at law was not entirely adequate and complete for that purpose.

II.

In reference to the legality of the contract in suit, appellee seeks to distinguish the case at bar from *Hazelton* v. *Sheckells*, 202 U. S., 71, on the theory that the subject matter of the contract in the last mentioned case did not require professional services nor any special fitness on the part of the agent for any particular duties necessarily required by the contract.

This, it is submitted, is a distinction without a difference.

The objection of illegality attaches to all agreements on a contingent basis for services in procuring legislation, and no distinction appears to have been drawn in the cases between services requiring professional skill and other services.

As a matter of fact, in *Clippinger* v. *Hepbaugh*, 5 W. & S., 315, and *Wood* v. *McCann*, 6 Dana (Ky.), 366, which are cited with approval in the *Hazelton* case, the services in question were professional services of lawyers and the contingency of the compensation was deemed fatal to a recovery irrespective of the question that only strictly legal services and no other improper action may have been contemplated.*

Appellee contends that words should be given an innocent meaning, unless an improper meaning is clearly intended and that the contract in suit should not be construed to include by its terms services of an improper nature. This argument is answered by the cases above mentioned and the other cases referred to in appellant's main brief. These cases leave no doubt as to the invalidity of *any and every* agreement upon a contingent basis

* In *Clippinger* v. *Hepbaugh*, the headnote makes reference to sinister means or personal influence, but the decision itself goes to the extent above stated. In *Wood* v. *McCann*, the plaintiff was allowed to recover on the ground that it did not appear that the compensation was contingent, but the reasoning support's appellant's above proposition.

for services in procuring legislation upon a matter of public interest, in respect of which neither of the parties has any lawful claim. They expressly hold that such agreements are void without reference to the question whether by their terms they include services of an improper nature or whether improper acts are contemplated or are actually used (see language quoted on pages 28–33 of appellant's main brief). Such contingent arrangements on account of their evil tendency, cannot, under the authorities have an innocent meaning.

The cases upon which the appellee relies as sustaining the validity of contracts for professional services were all cases relating to the *prosecution of lawful claims under existing legislation*, as *distinguished* from contracts for *services in procuring legislation.*

The distinction is recognized by the Court in *Hazelton* v. *Sheckells*, 202 U. S., 71, when it says, at page 78:

> " But the services contemplated as a partial consideration of the promise to convey were services in procuring legislation upon a matter of public interest, in respect of which neither of the parties had any claim against the United States. An agreement upon such a consideration was held bad in *Tool Co.* v. *Norris*, 2 Wall., 45. *Of course we are not speaking of the prosecution of a lawful claim.*"
>
> *Hazleton* vs. *Sheckells*, 202 U. S., 71, 78.

In *Stanton* v. *Embrey*, 93 U. S., 548, the contract related to the prosecution before the Treasury Department, of a claim against the United States for the use of certain steamers.

In *Taylor* vs. *Bemiss*, 110 U. S., 42, the contract related to the prosecution of a claim against the United States before the Southern Claims Commission under the act of March 3rd, 1871.

In *Nutt* vs. *Knut*, 200 U. S., 12, the contract re-

lated to the prosecution of a claim for property taken by officers and soldiers of the United States during the years 1863, 1864 and 1865. Moreover, this case came up on a writ of error to the Supreme Court of Mississippi, on which only Federal questions are reviewed and the United States Supreme Court therefore apparently declined to review the evidence bearing on the legality of the contract in question.

In *Houlton* vs. *Nichol*, 93 Wis., 393, stress is laid by the Court upon the fact that no legislation was had, solicited or required, and that the desired action by the Interior Department was urged as a right and not as a favor. The contract then under consideration is referred to by the Court as an agreement to "promote the enforcement and *application of existing laws* and established regulations of the Interior Department to existing conditions to the end that persons having a *right* to select and acquire lands on the public domain might exercise such right.

McBratney v. *Chandler*, 22 Kansas, 482, was a suit to recover counsel fees for prosecuting in Washington the claim of the Miami Indians for moneys alleged to be due them.

All these cases, therefore, related to the prosecution of *existing lawful claims*, not to the procuring of legislation.

The case of *Salinas* v. *Stillman*, 66 Fed. Rep., 677, in so far as it purports to sustain as valid a contract to pay to Washington agents a contingent compensation for procuring an appropriation for the purchase of the Fort Brown reservation, is inconsistent with the decision of the Supreme Court in the *Hazelton* case.

In *Barry* v. *Capen*, 151 Mass., 99, the retainer was not for a contingent compensation as claimed in appellee's brief, but for a definite sum, and the decision is therefore not relevant to the question under discussion.

Appellee also relies upon the decision of the Appellate Division of the Supreme Court of the State of

New York in *Dunham* vs. *Hastings Pavement Company*, 57 App. Div., 426. No discussion of this decision is required, however, since the same court in a subsequent decision relating to the same contract recognized that its decisions were not in accordance with the doctrine of the United States Supreme Court as laid down in *Hazelton* vs. *Sheckells*. (See *Dunham* vs. *Hastings Pavement Company*, 118 App. Div., 127-129).

III.

In Point IV. of appellee's brief an attempt is made to minimize the error of the Court below in failing to deduct the value of the lands and easements (items "*b*", "*c*" and "*d*"), from the total consideration received by Valdes, and the suggestion is made that the latter could have been expropriated by the owner of the franchise by eminent domain on payment of their actual value. In view of complainant's testimony as to the value of these parcels as agricultural property, it is intimated that, at the time of their transfer they were not worth more than a few hundred dollars.

It is submitted that this valuation of these parcels as agricultural property does not represent the *actual* value for condemnation purposes. The availability and necessity of these lands for the development of a water power are, under the authorities, elements of value when it is sought to take such property by eminent domain.

United States vs. *Chandler-Dunbar Co.*, 229 U. S., 53, at pages 76-77.

Boom Co. vs. *Patterson*, 98 U. S., 403, 408.

Minnesota Rate Cases, 230 U. S., 352, at 451.

In the case at bar the testimony showed that the project could hardly have been carried out without the lands in question, and their great value, in view of their availability and undoubted necessity for the proposed water power development, must therefore be obvious.

It is suggested in appellee's brief that the Court below apparently deducted the sum of $1,000 to cover these items. While it is true that the decree awarded to complainant $13,000 instead of $13,100, this difference was quite obviouly not due to any conscious or intentional deduction made by the Court below; for the direction for the entry of judgment (Record, bottom of p. 93 and top of p. 94) is for $13,100, being 10 per cent. of the entire par value of stock and bonds in question and the difference between it and the judgment as entered must therefore have been accidental.

Respectfully submitted,

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Counsel for Appellant.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 343.

RAMON VALDES, APPELLANT,

vs.

TULIO LARRINAGA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

BRIEF FOR APPELLEE.

EDWARD S. PAINE,
FREDERIC D. MCKENNEY,
Attorneys for Appellee.

SUBJECT INDEX.

ALPHABETICAL LIST OF AUTHORITIES CITED.

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BRIEF FOR APPELLEE.

Preliminary Statement.

The appellee will follow the classification of points adopted by appellant's counsel in their brief and will reply to the arguments which are insisted on to reverse the judgment of the court below in the same order in which they have been made.

Point I.

The case was properly brought in equity.

(a) The arrangement between the parties created a partnership, and accordingly complainant was entitled to an accounting in equity against defendant.

(b) The contract created an equitable lien in favor of complainant below, which he was entitled to enforce in equity.

(c) Complainant was entitled to specific performance of the contract in equity.

Point II.

The contract in suit is in no way against public policy.

(a) The complainant was to be a joint owner with defendant in the franchise, and accordingly had a right to urge that it be granted.

(b) The contract provided for necessary and proper professional services to be rendered by complainant as a civil engineer, and accordingly was not a "lobbying" contract.

Point III.

Whether or not the franchise which had been granted was forfeited by the declaration of the Executive Council, Valdes purported to sell and did sell his rights under the same and received therefor large compensation.

Point IV.

The decree on accounting was fully sustained by the evidence.

Point V.

The decree of the United States District Court for Porto Rico should be sustained.

ARGUMENT.

Point I.

THE CASE WAS PROPERLY BROUGHT IN EQUITY.

(a) The arrangement between the parties created a partnership, and accordingly complainant was entitled to an accounting in equity against defendant.

The contract in question constituted a partnership. The contract is evidenced by two letters, the first from Valdés to Larrinaga, dated October 30, 1898, and the second from Larrinaga to Valdés, dated October 31, 1898 (p. 59 of the Record). In the first letter Valdés says: "I propose to interest you in the profits of said concession in the amount of a 10 per cent, provided that you accept the obligations hereinabove mentioned." To this Larrinaga replied:

> "PORTO RICO, *October* 31, 1898.
>
> "Sr. Don Ramon Valdés y Cobian.
>
> "MY DISTINGUISHED FRIEND:
>
> "I am in receipt of your favor of the 30th inst., wherein you propose me *a share of 10 percent in the property of the concession* for the utilization of waters from the La Plata River at the point called el Salto near Comerio, I, in exchange to help you in the steps to be gone through and in everything in connection with said concession, such as plans, projects and all what concerns to the technical part.

> "I hereby accept *the participation of 10 per cent of said concession* in exchange of my personal or professional services without any obligation on my part of make any pecuniary disbursement for exploiting or conveying said concession.
>
> "Very truly yours,
>
> "T. LARRINAGA."

It is to be noted that the offer in the letter of October 30 is controlled by the acceptance of October 31, and the language of the later letter must govern, as this was the understanding that was finally adopted and acted on by the parties. For this purpose it is immaterial whether the second letter is treated as an acceptance of the first, defining the terms of the agreement more clearly, or whether the second letter is treated as a new offer which was accepted and acted on by the parties.

It is clear by the terms of this second letter that the agreement was that Larrinaga should have a 10 per cent share or ownership in the proceeds of the enterprise.

Under this agreement, according to the allegations of the bill of complaint (p. 3, fol. 6 of the Record) in March, 1899, Valdés "renewed his application and presented the same in the joint names of himself and the complainant Larrinaga." This allegation is apparently not denied. Furthermore, Mr. Larrinaga, in his testimony (p. 40, fol. 73 of the Record), says:

> "The first application during the military government was signed by me and Mr. Valdés as at the time he in good faith admitted that we had a partnership there. That first franchise was signed by himself and myself."

Under the laws of Porto Rico, where this contract was made, the arrangement clearly amounted to a partnership.

The Civil Code of Porto Rico treats of partnerships under Title 8 of Book Fourth. In section 1567 it says:

> "Partnership is a contract by which two or more persons bind themselves to contribute money, property, or *industry* to a common fund *with the intention of dividing the profits among themselves.*"

Section 1569 provides that the form of establishing a partnership (except where real property is involved) is immaterial. Section 1573 divides partnerships into two classes, general or particular, and section 1580 provides that a particular partnership has for its object specified things only, their use or profits, or a specified undertaking, etc. Section 1591 provides that parties may agree as to how losses and profits shall be divided.

Section 1593 provides:

> "An agreement in which one or more of the partners are excluded from any share in the profits or losses is void.
>
> "*Only the partner contributing his serv-*

> *ices but no capital may be exempted from any liability in the losses.*"

Accordingly we have a case where the parties agreed that the proceeds of a particular joint enterprise should be divided between them on a certain basis; that one party should furnish capital and the other should furnish his professional work or industry, and that in accordance with section 1593, *supra*, the one furnishing industry should bear no part of the losses.

Taking into consideration the language of the contract, the application for a franchise thereunder in the names of both parties, the testimony of Larrinaga and the provisions of the local law, it seems beyond discussion that the contract amounted to a partnership arrangement. Accordingly the complainant below was without question entitled to seek the aid of a court of equity in obtaining an accounting from his partner as to the proceeds of the partnership.

> "The right of every partner to have an account from his copartners of their dealings and transactions is too obvious to require comment."
>
> *Lindley on Partnership*, vol. II, page 492.

Even if the contract should be held not to amount to a strict partnership, technically speaking, it provided for a joint enterprise in the pro-

ceeds of which both parties were interested, and under the same legal principles entitling a partner to an equitable accounting the complainant below was entitled to invoke the jurisdiction of a court of equity. Equity entertains jurisdiction of accountings between partners largely by reason of the relation of trust and confidence existing between them, to guard which equity lends its assistance. If it could be held for any reason that some one of the technical elements of a partnership were lacking, this should not affect the general principles underlying equity jurisdiction in such cases, and the aid of the court should not be refused for this reason.

In *Mathewson vs. Clarke*, 6 How., 122, a master of a vessel was to have besides his wages one-tenth of all profits as full compensation for his services. He brought his bill in equity for an accounting and the equitable jurisdiction was contested.

This court held that while the complainant did "not represent himself to be a partner in any other light than to show the extent of his interest," and while the agreement did not make the master a partner because all of the other partners had not consented to it, nevertheless the master was entitled to an accounting in equity against "the partnership, or whatever else it may be styled."

(Pages 140 and 141 of the opinion.)

(b) The contract created an equitable lien in favor of complainant below, which he was entitled to enforce in equity.

The contract, being an agreement assigning a specified interest in a particular franchise, or its proceeds, not yet in existence, gave complainant an equitable lien on the franchise when secured or on the proceeds thereof, and the aid of the court of equity was properly invoked to enforce complainant's rights by reason of such equitable lien. In *Wylie vs. Coxe*, 15 How., 415, cited in *Stanton vs. Embrey*, 93 U. S., 548, the court sustained a similar equitable lien, and in *Nutt vs. Knut*, 200 U. S., 12, a suit to enforce contingent compensation in favor of an attorney employed to prosecute a claim against the United States, the action was in equity, and the jurisdiction was never doubted.

See also

Peugh vs. Porter, 112 U. S., 737.
Spofford vs. Kirk, 97 U. S., 484.
Milliken vs. Barrow, 65 Fed., 888.

(c) Complainant was entitled to specific performance of the contract in equity.

The contract being an agreement to convey an interest in a particular franchise for the development of a particular water power at a particular point was properly enforceable in equity. This is true on the same basis of fundamental principle that equity enforces contracts for the sale of par-

ticular parcels of land, on the ground that damages at law are not an adequate remedy. It seems clear that if a contract had been made to transfer an interest in the water power itself, together with its site, there would have been no question about complainant's right to seek specific performance in equity. The same reasoning should apply to a franchise covering the exclusive right to develop a particular water power. The title to the water power was in the People of Porto Rico under Porto Rican law, and the franchise granted the right to develop it. Either the franchise amounted to an interest in real property, that is, the falls and the bed of the river, or if not, then it is personal property of a unique and peculiar nature. There was no ordinary standard whereby its money value could be assessed. Complainant is entitled to specific performance of the contract. A franchise of this nature is similar to a patent right and contracts to assign future patents have always been held specifically enforceable.

Westinghouse, etc., vs. Chicago, etc., 85 Fed., 786.

Apellant relies on the objection that the contract could not be enforced on the ground of lack of mutuality, because Valdés could not have specifically enforced Larrinaga's agreement to render professional services. This contention is groundless by reason of the fact that Larrinaga's part of

the contract was at the time of bringing suit fully performed.

United States vs. Chicago, M. & St. P. Ry. Co., 207 Fed., 164, 178.

Mississippi Glass Co. vs. Franzen, 143 Fed., 501.

Point II.

THE CONTRACT IN SUIT IS IN NO WAY AGAINST PUBLIC POLICY.

(a) The complainant was to be a joint owner with defendant in the franchise, and accordingly had a right to urge that it be granted.

The correspondence which constitutes the contract consists of two letters. In the first letter, under date of October 30, 1898, Valdés wrote to Larrinaga: "I propose to interest you in the profits of said concession to the amount of a 10 per cent."

In reply to this letter, under date of October 31, 1898, Larrinaga said: "I am in receipt of your favor of the 30th inst. wherein you proposed me *a share of 10 per cent in the property of the concession.*" * * * "I hereby accept the *participation of 10 per cent of said concession.*" The words used in the letter of October 31, 1898, make it absolutely clear that Larrinaga was to have a one-tenth *ownership* in the concession when granted. The letter in the record is translated into English from Spanish. The Spanish word

corresponding to the English word "property" as used here is the common word signifying ownership.

If there is any distinction in meaning between the phrase contained in the first letter and the phrases contained in the reply, the reply must govern. If the contract be regarded as springing from the combination of the two letters, as offer and acceptance, then the two must be limited by the terms of the acceptance. If this is not so, then it necessarily results that the second letter was not an acceptance of the first letter or offer, but was a counter-offer. It was this new offer that was accepted and acted on by the parties.

Larrinaga being a joint owner in the franchise when obtained, he had as much right as Valdés himself had to urge its passage. In *Marshall vs. Baltimore & Ohio R. R. Co.*, 16 How., 314, this court said, p. 334:

> "All persons whose interests may in any way be affected by any public or private act of the legislature have an undoubted right to urge their claims and arguments, either in person or by counsel professing to act for them, before legislative committees as well as in courts of justice."

It appears from the complaint (p. 3, fol. 6 of the Record) that the application to the Military Governor of Porto Rico made in March, 1899, was in the joint names of Valdés and Larrinaga. In Mr.

Larrinaga's testimony he says (p. 40, fol. 73 of the Record), that this application was made in the joint names of Valdés and himself, and this is apparently not disputed.

The complainant having a joint interest in the ownership of the franchise that was sought for, the case on this ground alone is distinguished absolutely from the ordinary so-called lobbying contracts.

(b) The contract provided for necessary and proper professional services to be rendered by complainant, as a civil engineer, and accordingly was not a "lobbying" contract.

The complainant was a civil engineer of forty-two years' experience at the time of the trial (Record, p. 22, fol. 39). The application was for a private franchise for the privilege of utilizing a water power and transforming it into electrical energy, and accordingly it was absolutely requisite that the services of a skilled and competent engineer be employed in order that the application should be intelligently laid before the Executive Council.

The Executive Council of Porto Rico, which is by law endowed with the power to grant franchises, acts in such matters as a *quasi* judicial body. Its procedure (and as to this the court can doubtless take judicial notice) is to refer all applications for private franchises to its Franchise Committee. This committee then holds public hearings, at which hearings the applicants and all

other interested parties may and do appear and urge their claims. The Franchise Committee invariably, regarding such franchises, calls for detailed information and data with regard to the technical aspects of the proposition under discussion, and generally insists on the filing with it of accurate and detailed plans and blue prints, showing the character of work which it is proposed to perform. At these hearings there are often, as in this case, competing applicants and the committee hears and passes on the advantages to the public of the different propositions of the respective parties. Frequently, as in this case, the committee makes investigation of a proposed project on the ground, so that the physical and engineering features of the proposition may be pointed out to them. The council properly refuses to grant franchises for developments that are not practicable from an engineering standpoint, and in the case of two applicants would favor the one proposing the most feasible method of work and construction. It seems too clear for discussion that the services of a civil engineer were necessary and proper in connection with the application for a franchise of this nature.

As to this contract, then, there is no presumption of impropriety. On the contrary there is a strong presumption in favor of its innocence.

In *Trist vs. Child*, 21 Wall., 441, at p. 450, this court said:

> "We entertain no doubt that in such cases, as under all other circumstances, an

> agreement express or implied for purely professional services is valid. Within this category are included drafting the petition to set forth the claim, attending to the taking of testimony, collecting facts, preparing arguments, and submitting them orally or in writing, to a committee or other proper authority, and other services of like character. All these things are intended to reach only the reason of those sought to be influenced. They rest on the same principle of ethics as professional services rendered in a court of justice, and are no more exceptionable."

In *Stanton vs. Embrey*, 93 U. S., 548, at p. 557, this court held that contracts for lobbying or to improperly influence public agents in the performance of their public duties stand upon a very different footing from contracts providing for professional services of a legitimate character.

See also

Taylor vs. Bemiss, 110 U. S., 42.

In the case of *Nutt vs. Knut*, decided by this court and reported in 200 U. S., at p. 12, the contract provided that as a contingent fee the plaintiff was to get a percentage of any amount recovered from the United States, and he was to prosecute the claim not only before the courts, but "before any of the departments of the Government or before the courts of the United States, or before any officer or commission or convention specially authorized to take cognizance of said claim, or

through any diplomatic negotiations as may be deemed best by him for the interests of the party of the second part." The contract itself was before this court and it was strenuously argued that by reason of the nature of the services to be rendered by the complainant the contract was against public policy and unenforcible, but this court expressly accepted the view of the Supreme Court of Mississippi sustaining the contract, which was expressed as follows:

> "The first question for consideration is whether the contract is void on its face. Very clearly it is not, unless some special significance be attached to the words, 'or through any diplomatic negotiations as may be deemed by him best for the interests of the party of the second part.' What these words mean, no one connected with this litigation as counsel seems to know. Certainly this court does not know, but it cannot construe them to convey an illegal meaning. They may mean the mere diplomatic tact of courteous manner and bearing in dealing with objections in the dispositions of items of the claim, which would be the lawyer's duty. They may mean divers things, proper and improper, and so the meaning must be attached to them, on their face, which would be proper. 'When a contract is capable of two constructions, the one making it valid and the other void, it is clear now the first ought to be adopted.' *3 Am. & Eng. Enc. Law* (1st ed.), p. 869, note; *Clay vs. Allen*, 63 Miss., 426; *Merrill vs. Melchior*, 30 Miss., 516; *Wilkins vs. Riley*, 47 Miss., 313. This

> question is therefore settled on general common-law principles, and by the express adjudication of our own courts."
>
> Knuf *vs.* Nutt, 83 Miss., 365.

It is submitted that these cases absolutely establish the proposition that there is nothing improper in a contract providing for the professional services of a civil engineer in the obtaining of a franchise to develop a water power for a contingent compensation in a case where the contract goes no further and does not include by its terms services of an improper nature.

Counsel for the appellant exhaust their ingenuity in the attempt to read into every-day, ordinary and innocent language a dark and devious meaning. The letter of October 30, 1898, from Mr. Valdés, contains the words: "so that you may help me in getting it through and in all the rest in connection with said franchises, such as plans, projects, and in everything concerning the technical part thereof."

To this Larrinaga replied, in his letter of October 31, 1898:

> "My Distinguished Friend:
>
> "I am in receipt of your favor of the 30th inst., wherein you propose me a share of 10 per cent in the property of the concession for the utilization of waters from the La Plata River at the point called el Salto, near Comerio, I, in exchange to help you in the

steps to be gone through and in everything in connection with said concession, such as plans, projects and all what concerns to the technical part.

"I hereby accept the participation of 10 per cent of said concession in exchange of my personal or professional services without any obligation on my part of make any pecuniary disbursement for exploiting or conveying said concession.

"Very truly yours,

"T. LARRINAGA."

It seems hardly necessary to observe that this correspondence being an exchange of letters couched in informal terms between business men and not formal documents drafted by attorneys-at-law, the writers should not be held to any narrow technical construction of the words used by them. From a reading of Mr. Larrinaga's letter as a whole it is obvious that he clearly intended to make it plain that the work to be done by him was, as he carefully stated, "plans, projects and all what concerns to the technical part."

Counsel for the appellant lay great emphasis on the phrase in the first letter "in getting it through." This phrase is clearly limited by the next phrases "and in all ways in connection with said franchise *such as plans, projects, and in everything concerning the technical part thereof.*" Naturally the furnishing of plans and projects and the doing of everything concerning the technical part

amounted to help in getting the application through, and the whole point of appellant's counsel boils down to an insistence on the narrow technical meaning of the conjunction "and." They attempt to impose on the word "and" the burden of differentiating between help in getting it through and the specific words later used. This construction is not only against what appears to be the plain meaning of the parties, but also against all rules of construction, as will be later shown.

The first letter, if it forms a part of the contract at all, must be limited and controlled by the terms of the later letter as already shown. The language of the second letter is narrowed to "everything in connection with said concession, such as plans, projects and all what concerns to the technical part." Here again counsel for the appellant attempt to read into the phrase "everything in connection with said concession" an improper meaning; but the phrase is clearly limited by the words "*such as*" and what follows.

Appellants' counsel also lay stress on the use of the word "personal" in the last paragraph. In the light of the whole letter, it is submitted that the use of this general word "personal" cannot carry with it any enlargement of the particular words so carefully used in the clause definitely specifying the work to be done.

Appellant's argument is this, that inasmuch as certain general words are used in the correspondence which, by stretching them to their widest meaning, *may* cover improper acts, such acts *must* be presumed to be included in the language. It is submitted that in the absence of language necessarily comprehending impropriety, the ordinary principle of contractual interpretation must apply; that is, words used will be given an innocent meaning unless an improper meaning is clearly intended.

> "It is a rule of interpretation that, where a contract is fairly open to two constructions, by one of which it would be lawful and the other unlawful, the former must be adopted."
>
> *Hobbs vs. McLean*, 117 U. S., 567, at p. 576.
>
> *D., L. & W. Ry. vs. Kutter*, 147 Fed., 51.

In the latter case, the court uses language which is singularly applicable to the case at bar. The court says (p. 62):

> "The ingenuity of counsel for the plaintiff in error has been strenuously exerted in the effort to pervert a contract which is capable of an innocent meaning into one which was devised to effect iniquitous ends by devious means by their own client. *The fundamental rule is that a contract will be construed, if possible, as being made for a legal rather than for an illegal purpose. Hobbs*

vs. McLean, 117 U. S., 567; *U. S. vs. Railroad Co.*, 118 U. S., 235. *Its application certainly should not be relaxed when a vicious construction is sought for by the party who has made the contract.*"

In *Houlton vs. Nichol*, 93 Wisc., 393, the court said, at p. 399, citing and following *Tool Co. vs. Norris*, 2 Wall., 45; *Trist vs. Child*, 21 Wall., 441, and *Marshall vs. B. & O. R. R. Co.*, 16 How., 314:

> "Plaintiff agreed to furnish defendant with minutes of desirable lands on the public domain 'on which to locate, and to instruct him in respect to what he should do as a settler on such lands in order to secure priority under the land laws of the United States, and to do all that was necessary or could be done to bring the land in question into market and enable defendant to acquire title thereto. Wherein does this language contemplate the doing of anything illegal? The intention of the parties must be gathered from the language they used, from the contract actually made, in the light of attending circumstances, the same as in any other case. *If properly construed, it does not, by its terms or by necessary implication, contain anything illegal or tend to any violation of sound morals, the fatal element should not, through an overzealous desire to fortify against the deplorable effects of lobbying contracts, strictly so called, which all recognize and should unhesitatingly condemn, be injected into it by mere suspicion and conjecture that the parties intended to do some illegal act or a legal act by illegal*

means, or that the agreement might have probably led to improper influences upon, or tampering with, official conduct, and thereby defeat the contract. It is sometimes lost sight of that the presumptions in human affairs are in favor of innocence rather than of guilt, and that such rule applies in testing such a contract as the one we have here by the principles of sound morals."

In *Salinas vs. Stillman*, 66 Fed., 677, the court said:

> "In the case of *Trist vs. Child*, 21 Wall., 441, the distinction is clearly recognized between contracts for lobbying services and contracts for professional or other services legitimately rendered by agents. The bill is silent as to the character of the services rendered in Washington for which payment was to be made. We naturally indulge in the presumption that they were lawful."

See also

Lyon vs. Mitchell, 36 N. Y., 235.
McBratney vs. Chandler, 22 Kan., 482.

Finally, the general and indefinite language of the letters must be governed by the particular words used in both letters limiting the services to "plans, projects, and all what pertains to the technical part."

In *Mutual Life Ins. Co. vs. Hill*, 193 U. S., 551, at p. 558, Mr. Justice Brewer said:

> "The ordinary rule in respect to the construction of contracts is this: that where there are two clauses in any respect conflicting, that which is specially directed to a particular matter controls in respect thereto over one which is general in its terms, although within its general terms the particular may be included. Because when the parties express themselves in reference to a particular matter the attention is directed to that, and it must be assumed that it expresses their intent, whereas a reference to some general matter, within which the particular may be included does not necessarily indicate that the parties had the particular matter in thought."

Accordingly, it is submitted that the contract evidenced by the friendly and informal letters which passed between the parties did not require or include the doing of improper acts by appellee, but primarily contemplated and required the rendition by Mr. Larrinaga of professional services as a civil engineer. The contract is absolutely valid, enforcible, and is in no way against public policy.

It is settled law that in a contract otherwise proper the fact that compensation is to be contingent does not vitiate the contract.

Ball vs. Halsell, 161 U. S., 72, at p. 80.
Taylor vs. Bemiss, 110 U. S., 42.
Stanton vs. Embrey, 93 U. S., 548.
Wright vs. Tebbits, 91 U. S., 252.

On page 5 of their brief, counsel for the appellant select disjointed phrases from the bill of complaint, and the testimony of complainant below, and attempt thereby to show that the acts done by Larrinaga were not proper professional acts. Here, again, it is unfair to endeavor to establish the meaning of the complaint or the purport of complainant's testimony by selecting unrelated and disjointed phrases therefrom. A reading of the complaint as a whole will show that the obvious theory of the attorney who drew it was that the contract was for professional services, and that the services rendered were wholly and exclusively proper professional services. In paragraph II of the bill of complaint, page 2, fol. 4, of the record, it reads:

> "That in order that the said Valdés should be successful in securing the grant of said concession to him it was necessary that he should have prepared and furnish to the proper governmental authorities full information and data in relation to the character and extent of the work and improvements which he was intending to construct; it being required by the Government officials that he should furnish technical data relating to the projected enterprise, including plans, specifications, and other detailed technical information, and that in and about the preparation of such plans and specifications and the securing of such technical information the said Valdés not being an expert in said business, although he had already some preliminary plans for said

> project, however, he sought for and secured the assistance and the services of the above-named complainant, who was and is a civil engineer of many years' experience, to assist him in his efforts to carry through to a successful termination his said application for the said concession or franchise."

The same attitude is maintained consistently through the bill. Appellant emphasizes the clauses "through the efforts and good offices;" "work in support of the franchise before the Government;" "in presenting the case to the Department of War in such a way that Secretary Root agreed to grant it;" "appearances and explanations before the Executive Council on many occasions;" "obtaining franchise from Executive Council;" "procuring from Executive Council extensions of time for compliance with provisions of franchise," and so on. Without attempting to repeat all of these clauses, it is clear that none of them precludes the meaning that the efforts, good offices, work done, presentation of the case, appearances or explanations covered anything outside of proper argument, information and professional work. Here, again, appellant's counsel unwarrantably endeavor to apply to general words susceptible of an entirely innocent meaning a construction vicious and unlawful.

As an illustration of the unfairness of citing disjointed phrases, without respect to their con-

text, we will only point out two of the phrases selected by appellant as evidencing improper conduct by Larrinaga. On page 5, of their brief, appellant's counsel rely on the phrase "being instrumental in having the Vandergrift franchise knocked out." Turning to Larrinaga's testimony (p. 41 of the Record) we find that he stated to the Executive Council that the Vandergrift franchise was "a wild-cat scheme, that you could not think of building a line from here to Ponce, an electric line." In other words, Larrinaga, as an engineer, showed that as an engineering proposition it was not possible to build an electric trolley line through the mountainous heart of Porto Rico.

In the same paragraph appellant's counsel specified Mr. Larrinaga's activity in Washington before the War Department. On page 33 of the record, Mr. Larrinaga testified that he had "to go back to Washington to help Mr. Valdés *in some information that they asked.*" On page 39 of the record, Mr. Larrinaga testified, "it was the lack of Mr. Valdés' *knowledge in technical matters,* so I left everything arranged and came back" to Washington.

A careful reading of all of Mr. Larrinaga's testimony as a whole will reveal that the work done by him in pursuance of the contract was not only arduous, of long duration and effective, but in all respects proper and unobjectionable.

Appellant's counsel do not seriously urge that the acts done by Larrinaga were in fact improper. Their position is rather that the necessary intendment of the contract was to induce improper acts; and it is by this alleged necessary intendment that they endeavor to invalidate the contract rather than by any attempt to show improper action on Mr. Larrinaga's part. Inasmuch as it is impossible to sustain the proposition that the contract is in terms vicious, the whole objection must fall to the ground.

As a matter of fact, it appears from the record that it was an afterthought on the part of appellant to adopt the position that the contract was void as being a "lobbying" contract. No suggestion of such defense was made in the answer, the defense of illegality there being based on allegations to the effect that at the time the contract was made Mr. Larrinaga held a public office, which should have prevented him from entering into the contract. When it came to proofs of this point the defendant below utterly failed to sustain his allegations in this regard, and then it was that the suggestion that the contract was objectionable as being a "lobbying" contract first emerged. Appellant does not pretend that occupying the position of engineer in charge of dredging the harbor for a private corporation (p. 23 of the Record) could reasonably serve to prevent Mr. Larrinaga from properly making such a contract.

Even if defendant had been able to show any instance of improper activity on the part of Lorinaga subsequent to the making of the contract, such fact would not invalidate the contract if it were lawful in its inception. The contract must have been either valid or invalid at the time it was made; and subsequent acts will not invalidate it once it is an executed, binding, valid and unambiguous contractual obligation. If the contract had been ambiguous in its terms, construing its words in their ordinary meaning, then possibly proper evidence to this effect, if offered for that purpose, might have been admissible to explain the original intention of the parties; but here there was no ambiguous language and no material evidence of actually improper acts offered for the purpose of explaining its alleged ambiguity.

In *Barry vs. Capen*, 151 Mass., 99, an attorney was engaged for a contingent compensation, to appear before Street Commissioners and advocate the laying out of a street and the payment of damages therefor. The court said, speaking through Mr. Justice Holmes:

> "As the plaintiff recovered upon an express contract, and not upon a *quantum meruit*, it is not of the first importance to consider what he actually did. That is evidence, no doubt, tending to show what was the contemplated consideration of the defendant's promise, but it is not conclusive. The plaintiff may have rendered illegal services, and yet the defendant's promise

> may have been in consideration of the plaintiff's promising to perform or performing, legal ones only. *If the contract was legal, it would not be made illegal by misconduct on the part of the plaintiff in carrying it out. Howden vs. Simpson*, 10 Ad. & El., 793, 818, 819; *S. C.*, 2 Per. & Dav., 714, 740; 9 Cl. & Fin., 61, 68; Barrett, J., in *Powers vs. Skinner*, 34 Vt., 274, 284, 285."

See also

Dunham vs. The Hastings Pavement Co., 57 App. Div., 426.

Houlton vs. Nichol, 93 Wisc., 393, at p. 402.

In *Marshall vs. B. & O. R. R. Co.*, 16 How., 314, the court laid great stress on the fact that the contract in that case covered services which were to be rendered secretly and without disclosure to the authorities as to the real interest represented by the plaintiff. It is to be noticed that in our case there was absolutely no vestige of concealment or secrecy, but that on the other hand not only was the franchise originally applied for in the joint names of Valdés and Larrinaga, but also that all through the course of the negotiations Larrinaga was known to and recognized by the Government officials, and in fact was introduced to them by Valdés as Mr. Valdés' engineer and representative.

The cases cited by appellant to sustain the proposition that this contract is void as against public

policy are all entirely distinguished from the case at bar. In *Providence Tool Co. vs. Norris*, 2 Wall., 45, the contract was for the procuring of a Government contract for material. The agent had no particular professional qualifications. The subject matter of the contract did not require professional services and there was no special fitness shown on the part of the agent for any particular duties necessarily required by the contract. The reading of the contract showed that it of necessity intended personal influence and "lobbying." The case of *Hazelton vs. Sheckells*, 202 U. S., 71, is clearly distinguishable on exactly the same grounds. There, there were no allegations or showing of professional skill or need of professional skill, and furthermore the contract itself, by its terms, provided for services other than proper professional assistance.

The case of *Sussman vs. Porter*, 137 Fed., 161, is entirely different from the case at bar. In that case the contract provided that an agent should go ahead on his own initiative and take all the steps in connection with applying for a franchise. The contract left to this agent the whole burden of obtaining the franchise and deciding on the methods to be adopted in so doing. There was no requirement of professional ability and no allegation or showing of any professional ability or fitness on the part of the agent.

Appellant has produced no case where this court has held that a contract merely providing for proper professional services on the part of a professional man in connection with the obtaining of a private franchise where professional assistance was necessary and proper is in any way against public policy.

The appellant attempts to escape from the authority of *Nutt vs. Knut, supra*, on the ground that in that case this court was bound by the findings of the State court on a matter of State law. Not only was the contract and therefore the construction of the contract before this court in that case, but furthermore the construction of the State court on the matter of the validity or invalidity of the contract on the ground of public policy is not binding on this court.

It has been repeatedly held by this court that the construction of such contracts is not a matter of State law, but of general law, and on such a point of law this court would not be bound by the decision of any State court.

Carpenter vs. Providence, &c., Ins. Co., 16 Peters, 495.

Myrick vs. Michigan, &c., Ry. Co., 107 U. S., 102, at p. 109.

Liverpool, etc., Steam Co. vs. Phœnix Ins. Co., 129 U. S., 397, at p. 443.

Accordingly, appellee submits that this contract was innocent in its inception and by its terms, that the services rendered under it by appellee were proper, necessary and wholly unobjectionable, and that Valdés' attempt to defeat recovery on this grounds is as unsound in law as it is reprehensible in spirit.

Point III.

Whether or not the franchise which had been granted was forfeited by the declaration of the Executive Council, Valdes purported to sell and did sell his rights under the same and received therefor large compensation.

The appellant attempts to escape liability on his contract on the ground that his franchise had been forfeited and that the final franchise was not granted in the name of Valdés, but instead, in the name of the party to whom Valdés had sold his rights for a large consideration. In other words, the appellant seeks to shield himself behind the very course of business which the complainant charges to have been followed by Valdés for the purpose of defeating complainant's rights. The evidence certainly sustains the finding of the court below that, as a matter of fact, Valdés received for his rights under the franchise (which he had secured by utilizing the efforts and ability of Larrinaga) the consideration on which recovery was based. This finding of the trial court should not be disregarded by this court without cogent rea-

son. It is to be observed that at the time Valdés never admitted or acknowledged that his franchise was actually forfeited. He continued his exertions to defeat other applications. After the date of the alleged forfeiture he called on Larrinaga for services under the contract in issue, which were duly rendered; and finally, in the contract of January 14, 1905 (Complainant's Exh. "L," p. 67 of the Record), the "concession or franchise granted and *alleged to be forfeited by the Executive Council*," &c., was first listed as item "*a*" in the properties to be transferred for the sum of $131,000 in securities of the new company. Items "*b*," "*c*," and "*d*," being the only other properties transferred for this large consideration, were actually worth in themselves, according to the testimony of Mr. Larrinaga, not more than a few hundred dollars (p. 33 of the Record), and by the manager of the company now operating the properties are estimated as worth not more than $8,000 at the present time, which he stated to be considerably more than they were worth at the time of the execution of the contract (p. 55 of the Record). In view of this testimony and in view of the fact that the company acquiring a franchise would have the right under Porto Rican law of condemning these lands and so acquiring them at their actual value, it becomes apparent that practically all of the price of $131,000 in securities was paid for Mr. Valdés' rights under his franchise. To say that the company would issue $131,000 of securities for prop-

erties worth not more than, say, $8,000 without the franchise is to ignore obvious facts.

The grantee under this contract used the fact of its acquisition of Mr. Valdés' rights as an argument to influence the Executive Council in finally granting a franchise to the company in its name, and expressly reserved its rights which it had acquired from Valdés, thereby showing that it considered the rights obtained as existent and valuable. Appellant's counsel make a point of the fact that when it came to drawing a deed in pursuance of the terms of the contract the properties "*b*," "*c*," and "*d*" were mentioned and not the franchise, and from this they attempt to argue that even though the franchise was contracted to be sold it never was actually sold. By buying out Valdés and thus disposing of his claims and of him (and Larrinaga) as opposing claimants the new company acquired all it needed.

It is submitted that the appellant by his own act will not be permitted to deprive the appellee of his rights which had vested under the contract of sale dated July 14, 1905. No subsequent act of Valdés can bind the appellee. It is unnecessary to discuss Mr. Valdés' motives in omitting mention of the concession from the later deed. For the purposes of registration in the registry of Porto Rico it was advisable to transfer properties "*b*," "*c*," and "*d*" by deed, but not the franchise. The new company was then in possession of a new fran-

chise, and Valdés (and Larrinaga) were disposed of. By the contract of July 14, 1905, Valdés acquired the absolute right to obtain payment from the purchaser of the full amount to be paid for the franchise and properties therein listed upon the happening of the contingency therein expressed. The contingency was complied with. Valdés rights were fixed, and consequently Larrinaga's. No act of Valdés in failing to enumerate all the consideration in the subsequent deed can affect Larrinaga's rights.

Point IV.

The decree based on the accounting is amply sustained by the evidence

By the terms of the contract of sale Valdés was to receive $131,000 in securities of the new company, and the court found that he received these securities. It is not seriously contended that he did not receive them. Appellant's counsel take the position, however, that the court failed to properly deduct from the total amount of the consideration paid for the properties listed in the contract of sale the portion of the purchase price corresponding to items "*b*," "*c*," and "*d*" (p. 69 of the Record, fol. 129). The evidence referred to under the next preceding point shows that in the opinion of Larrinaga all these properties were not at the time worth more than a few hundred dollars, and that in the opinion of the manager

of the company now operating the properties they were worth at the time of trial about $8,000 and worth much less at the time the contract of sale was made.

In fixing the value to be applied to these properties it is to be remembered that the test must be their actual intrinsic value apart from the franchise, and not their value in connection with the franchise. This is for the reason that by the terms of the franchise itself, and under the general law of Porto Rico, the company operating the electric-light franchise is a public-service corporation and has the right of eminent domain, and accordingly had the right to condemn these properties and pay for them on the basis of their actual intrinsic value. If Valdés had sold the franchise and retained the properties, they could have been taken from him by expropriation proceedings by the holder of the franchise on payment of the actual value of the properties.

In view of these facts the court apparently deducted from the total consideration received for all items the sum of $1,000; and awarded complainant a verdict of 10 per cent of $130,000 instead of $131,000. In the absence of clear evidence rebutting this finding, this court will not go behind the finding of the lower court as to the value of parcels "*b*," "*c*," and "*d*."

The lower court correctly held, there being no evidence to the contrary, that all securities issued

for property at the organization of a corporation are worth their par value. Under the laws of Maine, where the purchaser was incorporated, a corporation can legally only issue stock at par and for value.

McAvity vs. Lincoln P. & P. Co., 82 Me., 504.

The presumption is against the doing of an *ultra vires* or illegal act by a corporation.

6 Thompson Corporations, § 7746.

Star Brick Co. vs. Ridsdale, 36 N. J. Law Rep., 229, at p. 232.

Point V.

The decree of the United States District Court for Porto Rico should be sustained.

Respectfully submitted,

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to the profits when they came into being. *Barnes* v. *Alexander*, 232 U. S. 117.

In such a case, if the party having the legal control of the property and profits abuses the fiduciary relation created by the contract, equitable relief is proper.

In this case it does not appear that the contract under which one who had formerly occupied a government office in Porto Rico rendered services in connection with obtaining a franchise from the local and Federal governments was improper or against public policy. *Hazelton* v. *Sheckells*, 202 U. S. 71, distinguished.

In this case *held*, that notwithstanding the forfeiture of an original grant and the final sale relating to a new but similar grant, as there was a continuous pursuit of the end achieved, one who was entitled to a share in the profits of the enterprise as originally conceived was entitled to share in the proceeds.

Where no error of magnitude is made by the court below in construing a contract for services executed in a foreign language and establishing the amount due thereunder, and only a translation of the contract is before this court, the decree will not be reversed.

THE facts, which involve the validity of a judgment on contract for services entered by the District Court of the United States for Porto Rico, are stated in the opinion.

Mr. Hugo Kohlmann, with whom *Mr. F. Kingsbury Curtis* and *Mr. Martin Travieso, Jr.*, were on the brief, for appellant:

Complainant had a full, adequate and complete remedy at law, and was not entitled to specific performance, accounting or any other equitable relief.

No fraud either legal or actual was alleged or proved. Even if it did exist, it would not be ground for equitable jurisdiction.

The contract was purely one of employment and not of a partnership.

No other ground of equitable jurisdiction existed in the case at bar.

Complainant's prayer for specific performance did not confer equitable jurisdiction.

The fact that complainant's compensation under the contract was fixed at a proportion of the profits realized by the defendant from the franchise did not entitle him to an accounting in equity.

The contract in suit being one for contingent compensation for services in procuring legislation, or other action by public bodies or officials, is against public policy and void and therefore not enforceable either in law or in equity.

The franchise or concession, in the profits of which appellee by reason of his contract claims to share, was declared forfeited by the executive council and appellant did not sell or purport to sell the same or make any profit thereon.

The contract in any event limited appellee's compensation to ten per cent. of the profit derived by appellant from the franchise itself, and there could be no recovery of the total price received by appellant for valuable lands and easements conveyed by the deed of June 1, 1905.

In support of these contentions, see *Ambler* v. *Choteau*, 107 U. S. 586; *Babbott* v. *Tewksbury*, 46 Fed. Rep. 86; *Berthold* v. *Goldsmith*, 24 How. 536; *Brown* v. *Equitable Life Assur. Society*, 142 Fed. Rep. 835; *S. C.*, 213 U. S. 25; *Buzard* v. *Houston*, 119 U. S. 347; *Clippinger* v. *Hepbaugh*, 5 W. & S. (Pa.), 315; *Grieb* v. *Equitable Life Assur. Soc.*, 189 Fed. Rep. 498; *Hazelton* v. *Sheckells*, 202 U. S. 71; *Martin* v. *Wilson*, 155 Fed. Rep. 97; *S. C.*, 210 U. S. 432; *Meehan* v. *Valentine*, 145 U. S. 611; *Nutt* v. *Knut*, 200 U. S. 12; *Parkersburg* v. *Brown*, 106 U. S. 487; *Paton* v. *Majors*, 46 Fed. Rep. 210; *Providence Tool Co.* v. *Norris*, 2 Wall. 45; *Root* v. *Railway Co.*, 105 U. S. 189; *Safford* v. *Ensign Mfg. Co.*, 120 Fed. Rep. 480; *Scott* v. *Neely*, 140 U. S. 106; *Sussman* v. *Porter*, 137 Fed. Rep. 161; *Trist* v. *Child*, 21 Wall. 441; *United States* v. *Bitter Root Co.*, 200 U.S. 451; *Washburn & Moen Mfg. Co.* v. *Freeman Wire Co.*, 41 Fed. Rep. 410; *Weed* v. *Black*, 2 MacArthur (D. C.), 268; *Wood* v. *McCann*, 6 Dana (Ky.), 366.

Barry v. *Capen*, 151 Massachusetts, 99; *Boom Co.* v. *Patterson*, 98 U. S. 43; *Dunham* v. *Hastings Improvement Co.*, 57 App. Div. 426; *S. C.*, 118 App. Div. 127; *Houlton* v. *Nichol*, 93 Wisconsin, 393; *McBratney* v. *Chandler*, 22 Kansas, 482; *Mathewson* v. *Clarke*, 6 How. 122; *Minnesota Rate Cases*, 230 U. S. 352, 451; *Salinas* v. *Stillman*, 66 Fed. Rep. 677; *Stanton* v. *Embrey*, 93 U. S. 548; *Taylor* v. *Bemiss*, 110 U. S. 42, relied upon by appellee can all be distinguished from this case.

Mr. Frederic D. McKenney, with whom *Mr. Edward S. Paine* was on the brief, for appellee.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a bill in equity for an account under a contract between the parties, upon which the plaintiff (appellee), obtained a decree for $13,000 and interest. The contract was embodied in letters, as follows, according to the official translation: On October 30, 1898, Valdes wrote to Larrinaga reciting that he had applied for 'a water franchise from the river Plata, place called Salto, for the purpose of developing electric power,' while Larrinaga was Assistant Secretary of 'Fomento,' (now Department of the Interior), and going on, "So that you may help me in getting it through, and in all the rest in connection with said franchise, such as plans, projects, and in everything concerning the technical part thereof, I need a person of my absolute confidence, and as you deserve it fully to me, and not believing that this is inconsistent with your present position of Chief Engineer of Harbor Works, I propose to interest you in the profits of said concession in the amount of a 10%, provided that you accept the obligations hereinabove mentioned." The next day Larrinaga answered acknowledging the letter "Wherein you propose me a share of 10% in the property of the concession for the

utilization of waters from the La Plata River at the point called el Salto, near Comerio, I, in exchange to help you in the steps to be gone through and in everything in connection with said concession, such as plans, projects, and all what concerns to the technical part.—I hereby accept the participation of 10% of said concession in exchange of my personal or professional services without any obligation on my part" to contribute money to the exploitation.

It is objected in the first place that the case is not one for equitable relief. But whether the contract created a partnership under the definition of the Civil Code of Porto Rico, § 1567, as argued by the appellee, or not, it gave the appellee an equitable interest in the concession to the extent of securing his share of the profits, if any, and attached to these profits specifically if and when they came into being. *Barnes* v. *Alexander*, 232 U. S. 117, 121. It established a fiduciary relation between Valdes, who had legal control, and the plaintiff. The bill alleges an abuse of the relation by a secret transaction from which it is alleged that the profits accrued. It is a proper case for equitable relief.

It is contended more energetically that the contract was against public policy. We shall not speculate nicely as to exactly what the law was in Porto Rico at the time when the contract was made, but shall give the plaintiff the benefit of the decisions upon which he relies, such as *Hazelton* v. *Sheckells*, 202 U. S. 71. But we discover nothing in the language of the letters that necessarily imports, or even persuasively suggests any improper intent or dangerous tendency. Larrinaga had ceased to be Assistant Secretary, and while in that position had refused to take part in the plan. His answer, which must control if there is any difference, as the parties went ahead on it (*Minneapolis & St. Louis Ry. Co.* v. *Columbus Rolling Mill Co.*, 119 U. S. 149), binds him to help in the steps to be

gone through, and in the technical part. If his help in the steps to be gone through was not to be, like the rest of his work, in the technical part alone, still there is nothing to indicate that it was of a kind that could not be stipulated for. In view of the subject-matter, a grant, it would seem to a riparian owner, of the right to use water power for public service, the things done, such as joining in an application to the Military Governor for a franchise on the footing of a joint interest, or helping to present it to the Secretary of War when it came up to him, or preparing plans and specifications to be presented to the Executive Council of Porto Rico when the first franchise granted by the Secretary of War had been lost by not complying with its terms, have no sinister smack. We see nothing to control the decision of the District Judge that the contract was not against the policy of the law.

As we have intimated, the Executive Council of Porto Rico was applied to after the loss of the first franchise, and it granted a new one on December 17, 1900; but after some extensions of time it declared the grant forfeited in July, 1902. Valdes and the plaintiff, however, did not admit the forfeiture, and Valdes procured the formation of a Maine corporation to take over his rights. On January 14, 1905, he made a preliminary contract for the sale of the franchise alleged to be forfeited and lands, easements, and options for use in connection with the same, reciting that he had petitioned for a new concession, or confirmation of the franchise. For this he was to receive $27,000, par value, of the mortgage bonds of the new company and $102,778, par value, of its stock, to be put in escrow until the company got a good title to the water rights and the franchise applied for. On June 1, 1905, in pursuance of the contract, a conveyance was made of the easements and lands that Valdes owned on the La Plata and his right to construct works there on the terms above

mentioned, with a slight change of the figures, to $28,000 and $103,000 respectively. The franchise was granted on January 4, 1906, the grant expressly providing that it should not be deemed a recognition of any right of Valdes to any previous grant.

On these facts it is argued that the concession in which Larrinaga was interested was not sold by Valdes and was not the source of any profit. That Valdes purported to sell it by his conveyance, as he agreed to sell it by the contract which the conveyance referred to and executed, or else that his rights under it passed *sub silentio* with the land, we think admits of no doubt. And while it may be true that the sale would not be likely to have taken place without a confirmation or re-grant of the franchise, still, as between these parties, it seems fairly probable that there was a continuous pursuit of the end; that, while the franchise gave the value to the land, the land gave a *locus standi* to the franchise; that, notwithstanding the disclaimer of the Executive Council, the position of Valdes as riparian owner and previous grantee had their effect on the final grant; and that at all events when the contract was made on January 14, 1905, Larrinaga became entitled to receive his ten per cent. when that contract should be carried out.

The last objection to the decree is, that the court did not deduct from the sum paid the value of the other property which entered into the consideration. We do not think it clear that Larrinaga did not stipulate for ten per cent. of the land as well as of the franchise. The Spanish is not before us, and the words '10% in the property of the concession' well might mean that. At all events no error of magnitude is made out, and without mentioning every detail it is enough to add that no sufficient reason is shown why the decree should not be affirmed.

Decree affirmed.

VALDES *v.* LARRINAGA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

No. 343. Argued May 4, 1914.—Decided May 25, 1914.

Although the contract for participation in profits involved in this case may not have created a partnership, as defined under § 1567, Civil Code of Porto Rico, it gave the party entitled to participate an equitable interest in the property involved which attached specifically